

(1960) 03 KL CK 0004
In the High Court Of Kerala
Case No : O.P. No. 820 of 1958

Vittala Shenoi and Another

APPELLANT

Vs

Cochin Devaswom Board and Another

RESPONDENT

Date of Decision : 07-03-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1960) KLJ 493

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : T.S. Krishnamoorthy.Iyer, for the Appellant; P.K. Krishnankutty .Menon, for the Respondent

Final Decision : Dismissed

Judgement

Velu Pillai, J.—The two petitioners and others made three applications, Exts. R 1 to R 3, to the Cochin Devaswom Board, the first respondent, for a declaration u/s 114 of the Travancore-Cochin Hindu Religious Institutions Act, 1950, which may be referred to hereafter as the Act, that the Azheekal Sri Varaha Devaswom Temple, which may be referred to hereafter as the Temple, is not an "institution" within the meaning of the Act. Section 114, sub-sections (1), (2) and (3) of the Act reads as follows:

114(1). "If any dispute arises as to whether any institution falls within the term "institution" as defined in Part II of this Act, such dispute shall be decided by the Board and the decision of the Board shall be published in the Gazette."

(2). "Any person affected by a decision of the Board under sub-section (1) may within six months from the date of publication of the decision of the Board in the Gazette, institute a suit in the court to modify or set aside such decision".

(3). "Subject to the final decree in the suit provided for in sub-section (2), the decision of the Board shall be final."

An institution is defined by Section 61(6) of the Act, the material part of which reads as follows:

61(6). "Institution shall mean a Hindu Religious Institution other than an incorporated or unincorporated Devaswom by whatever designation known, dedicated to or for the benefit of or used as of right by the Hindu Community or any section thereof and shall include--"

(a). "every Hindu Temple or shrine so dedicated or used as of right by the Hindu Community or any section thereof as a place of religious worship."

By Ext. P. 1 the first respondent declared that, the Temple is an institution, and so this petition has been filed under Article 226 of the Constitution to quash the declaration. It was contended, that the declaration amounted to a finding" on a jurisdictional issue and that therefore this court is bound to review the evidence upon which the first respondent has reached this conclusion as a court of fact would do. I cannot accede to this contention, for two reasons, first, that in the form and context in which the matter has come up before me now, no jurisdictional issue is involved and secondly, though certiorari cannot be excluded by sub-sections (1) and (2) of Section 114 of the Act, a certain measure of finality is attached to the declaration u/s 114. The prayer in the petition being only to quash Ext. P. 1 and, as admitted in paragraph 10 (6) of the petitioners' affidavit, there being no substantive proceedings pending before the first respondent, the declaration now made is not related to any pending proceeding. What is meant by a jurisdictional fact may be understood from the following passage in *Raman and Raman Ltd. Vs. The State of Madras and Another*, :

There may be cases where the jurisdiction of an inferior Tribunal may depend upon the fulfillment of some condition precedent or upon the existence of some particular fact.

Such a fact is collateral to the actual matter which the inferior Tribunal has to try, and the determination of whether it exists or not is logically and in sequence prior to the determination of the actual question which the inferior Tribunal has to try.

Granting that the declaration is preliminary to setting in motion the machinery of the Act in respect of the Temple, the declaration having been made final subject to the result of a Civil Suit, I consider, that the declaration is not open to scrutiny as a jurisdictional fact, though the right of interference by certiorari is not taken away. As observed by the Supreme Court in the case cited :

there may be Tribunals, however, which by virtue of legislation constituting them, have the powers to determine finally the preliminary facts on which the further exercise of their jurisdiction depends. With respect to them, in such cases, their decision even if wrong on facts or law cannot be corrected by a writ of certiorari.

2. It also seems to me that this is eminently a fit case in which, as prescribed by the legislature itself, a civil suit, rather than a proceeding under Article 226, is

the appropriate remedy, for, the first respondent cannot be deemed to be a party to the proceeding in which the declaration was made, but was a Tribunal vested with the power to decide. I think this case comes within the scope of the rule evolved in *Union of India (UOI) Vs. T.R. Varma*, , that where there is "a question on which there is a serious dispute, which cannot be satisfactorily decided without taking evidence.....it would have been a proper exercise of discretion in the present case if the learned Judges (of the High Court) had referred the respondent to a suit". But it was contended, that notwithstanding these observations in the case cited, the Supreme Court went into the question of fact and decided it; this was partly because the High Court had unjustifiably, in the opinion of the Supreme Court, decided the matter on the merits and the order of the High Court had to be reversed. The period of six months for a suit prescribed u/s 114 of the Act has no doubt elapsed. But this, in my opinion, does not furnish a ground for interference under Article 226. In view of the right of suit conferred by Section 62 of the Madras Hindu Religious and Charitable Endowments Act, 1951, the Madras High Court also declined to interfere under Article 226 in *K. Subramania Chettiar v. Commissioner for Hindu Religious and Charitable Endowments*, AIR 1958 Madras 501. The procedure for making a declaration u/s 114 of the Act is summary in character, and I come to the conclusion, that it is not proper to interfere under Article 226.

3. On the merits, it was urged by the learned counsel for the petitioners, that there are errors of law apparent on the face of the record in Ext. P. 1, and that therefore interference under Article 226 is warranted. As a preliminary to this argument it was pointed out, that the burden lay upon the first respondent to collect materials in support of the view that the Temple is an institution and to place them before the petitioners, but that, instead of doing so, the first respondent seemed to have relied on the inability of the petitioners to prove, that the Temple is a private temple and that the user by worshippers was with their permission. The statute has not laid down a procedure for making a declaration u/s 114 of the Act. The following observations of Varadachariar J. in *Narayanan v. Hindu Religious Endowments Board*, AIR 1938 Madras 209:

when user by the public generally to the extent to which there is a worshipping public in the locality is established, it is not unreasonable to presume that the user by the public was as of right.

were cited with approval in *Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others*, . In *N.C. Ramanatha Iyer v. Board of Commissioners for Hindu Religious Endowments*, AIR 1954 Madras 492, a similar declaration u/s 9 (12) of the Madras Hindu Religious Endowments Act (II of 1927) was made on the footing, that there was no evidence to show that Hindus were prevented from worshipping or that they sought permission for doing so. But the learned counsel for the petitioner relied on the observations of the Privy Council in AIR 1940 7 (Privy Council) that it is not enough to deprive the family of their private property, to show that Hindus willing to worship have never been turned away.

But in that case, there was evidence to show, that the grant of the temple was made to an individual or family and the temple was treated as the family property. Another test which the first respondent applied was, what was formulated in *Deoki Nandan Vs. Murlidhar*, that:

a religious endowment must therefore be held to be private or public, according as the beneficiaries thereunder are specific persons or the general public or sections thereof.

These errors were contended to be substantial; but I do not agree, and I think, that they are not sufficient to demand interference under Article 226.

On the above grounds, this petition is dismissed, but without costs.