

CASE NO.:
Appeal (civil) 1634 of 2006

PETITIONER:
P.R. Murlidharan & Ors

RESPONDENT:
Swami Dharmananda Theertha Padar & Ors

DATE OF JUDGMENT: 10/03/2006

BENCH:
S.B. Sinha

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 22268 of 2004)

S.B. SINHA, J.
Leave granted.

Application for impleadment is allowed.

The respondent herein claimed himself to be a Sansyasi in the tradition of "Sree Chattambi Swamy Thiruvadikal" and Madathipathi and Sthiradhyakshan of Parama Bhattara Gurukula Seva Sangham, popularly known as "Vadayampadi Asharamam". The respondent filed a suit in the Court of Munsiff, Kolencherry being O.S. No. 71 of 2000 for a declaration that he was entitled to continue in the said capacity and he was not allowed to discharge his duties attached to the said office in terms of the purported order dated 20.1.1996 of Kailasanatha Theertha Padar. The said suit was dismissed for default. An application for restoration of the said suit was filed which was also dismissed.

It is not in dispute that the appellants herein had raised a contention that the general body of the Seva Sangham had met on 7.1.2001 and resolved to amend the deed of trust so as to abolish the post of Sthiradhyakshan and to vest his powers and duties in the President of the Seva Sangham.

Kailasanatha allegedly served as Sthiradhyakshan since 1996 onwards. It was stated that while he was on pilgrimage, the first respondent claimed himself to have taken over the office of Madathipathi and Sthiradhyakshan of the Ashram, although he had allegedly no qualification therefor.

It is not in dispute that in relation to the affairs of the trust a suit being O.S. No. 30 of 2002 is pending in the Court of Munsif, Kolencherry. The said suit has been filed by one G. Parameswaran Nair, founder member of the Ashram questioning the aforementioned purported resolution dated 7.1.2001. An interlocutory application has been filed by Brahasree Kailasa Nandananda Teertha Padar for getting himself impleaded as a party. The said applicant in his impleadment application alleges that as per the bye-laws, he had admittedly been serving in the said capacity since 1995 and, thus, in law continues to be the Madathipathi and Sthiradhyakshan. Indisputably, the said applicant as also the first respondent herein are parties in the suit being O.S. No. 30 of 2002.

Though the suit filed by the first respondent was dismissed, he filed a writ petition before the Kerala High Court at Ernakulam praying for police protection which was marked as WP (C) No.16047/04. A Division Bench of the said High Court went into the question as to whether the first respondent was entitled to hold the office of Madathipathi and Sthiradhyakshan for the purpose of issuing an appropriate direction as regard grant of police protection. The High Court opined that 'the State and the police officials have got a legal obligations to give protection to the life and properties of the appellant upon arriving at a finding of fact that he was entitled to hold the said office. The High Court proceeded to determine the said purported

question in the light of Article 21 of the Constitution of India and opined:

"Respondent 5 and 6 have not given adequate and effective police protection in spite of repeated requests which only paved the way of the contesting respondents and others to take law into their hands and act contrary to the terms of the trust deed. Such being the conduct of the respondents, their assertion that Ext. P3 is fabricated by the petitioner cannot be believed. Going by the facts and circumstances of the case, and on going through the materials placed before us, we are inclined to accept the averment made by the petitioner that he is Sthiradhyakshan and Madathipathy of the Ashramam."

It was directed:

"We have therefore no hesitation to allow this writ petition giving direction to respondent 5 and 6 to give adequate and effective police protection to safeguard the interest of the petitioner being the Sthiradhyakshan and Madathipathy of the Vadayampadi Ashramam. Petitioner be given effective police protection so as to discharge the function as Sthiradhyakshan and Madathipathy as per Ext. P1 trust deed for his peaceful residence in the Ashramam\005"

Aggrieved thereby the Appellant is before us.

Mr. T.L.V. Iyer, learned senior counsel appearing on behalf of the petitioner and Mr. P Krishnamurthy, learned senior counsel appearing on behalf of the applicant in the impleadment application submitted that the High Court exceeded its jurisdiction in doing so.

Mr. K. Radhakrishnan, learned senior counsel appearing on behalf of the respondent no.1, on the other hand, took us through various documents referred to by the High Court in its impugned judgment for the purpose of showing that having regard to the resolution dated 20.1.1996, the respondent no.1 was entitled to function in the capacity of Madathipathi and Sthiradhyakshan. Our attention was also drawn to the fact that the first respondent was ordained therefor and, thus, he could not be removed from the post of Sthiradhyakshan and Madathipathy as per the terms of the trust.

The question is a contentious one. Construction of the said trust and the rights and obligations thereunder were in question. The first respondent filed a suit in that behalf. The said suit was dismissed. In terms of Order 9 Rule 9 of the Code of Civil Procedure another suit would not be maintainable at his instance. We have noticed herein before that another suit being O.S. No. 30 of 2002 is pending in the court of the Munsif. The High Court, despite noticing the said fact, sought to usurp the jurisdiction of the civil court. It, as noticed hereinbefore, determined the contentious issues which were required to be proved in terms of the provisions of the Indian Evidence Act.

It is one thing to say that in a given case a person may be held to be entitled to police protection, having regard to the threat perception, but it is another thing to say that he is entitled thereto for holding an office and discharging certain functions when his right to do so is open to question. A person could not approach the High Court for the purpose of determining such disputed questions of fact which was beyond the scope and purport of the jurisdiction of the High Court while exercising writ jurisdiction as it also involved determination of disputed questions of fact. The respondent no.1 who sought to claim a status was required to establish the same in a court of law in an appropriate proceeding. He for one reason or the other, failed to

do so. The provisions of Order 9 Rule 9 of the Code of Civil Procedure stares on his face. He, therefore, could not have filed a writ petition for getting the self same issues determined in his favour which he could not do even by filing a suit. Indeed the jurisdiction of the writ court is wide while granting relief to a citizen of India so as to protect his life and liberty as adumbrated under Article 21 of the Constitution of India, but while doing so it could not collaterally go into that question, determination whereof would undoubtedly be beyond its domain. What was necessary for determination of the question arising in the writ petition was not the interpretation of the document alone, but it required adduction of oral evidence as well. Such evidence was necessary for the purpose of explaining the true nature of the deed of trust, as also the practice followed by this trust. In any event, the impleading applicant herein, as noticed hereinbefore, has raised a contention that he alone was ordained to hold the said office as per the bye-laws of the trust. The qualification of the first respondent to hold the office was also in question. In this view of the matter, we are of the opinion that such disputed questions could not have been gone into by the High Court in a writ proceeding.

Furthermore, the jurisdiction of the civil court is wide and plenary. In a case of this nature, a writ proceeding cannot be a substitute for a civil suit.

For the foregoing reasons, the impugned judgment cannot be sustained which is set aside accordingly. However, in the event, the first respondent feels that he as a person should receive protection to his life he may make an appropriate representation to the Superintendent of Police who after causing an inquiry made in this behalf may pass an appropriate order as is permissible in law. The appeal is allowed with the aforementioned observations.

In view of the facts and circumstances of the case there shall be no order as to costs.