

CASE NO.:
Appeal (civil) 874-876 of 2005

PETITIONER:
The President, Poornathrayisha Seva Sangham, Thripunithura

RESPONDENT:
K. Thilakan Kavenal and Ors.

DATE OF JUDGMENT: 03/02/2005

BENCH:
Arijit Pasayat & S.H. Kapadia

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

The decision rendered by a Division Bench of Kerala High Court is questioned by the appellants, primarily on the ground that it should not have entertained the original petition which was purportedly filed as public interest litigation.

A brief reference to the factual position would suffice. Respondent No. 1 filed a writ petition under Article 226 of the Constitution of India, 1950 (in short the 'Constitution') questioning correctness of the decision taken by the Cochin Devaswom Board (in short the 'Board') in granting permission to the appellant-society for use of Oottupura (dining hall) on the left side of the Sri Pooranathrayisha Temple. Grievance of the respondent No. 1 - writ petitioner was that the appellant-society was charging huge charges by letting the Oottupura to various devotees for performing pooja in the temple and for permitting feasts to be organized on the Oottupura.

It was alleged that some officials and the appellant-society had made some secret arrangements for sharing the receipts surreptitiously. Grievance was made that the appellant-society was in fact operating as a parallel Board. A counter-affidavit was filed by the Board taking the stand that the present appellant-society was in no way interfering with the administration of the temple. The poojas and the routine functions of the temple are conducted under supervision and guidance of some officials as per traditional customs. The present appellant-society took initiative to conduct annual functions and other functions. Since amount that was being received by the Board was meagre and the appellant-Society wanted to provide necessary amenities in the Oottupura by converting it to a modern marriage hall so that financial benefits would accrue to the Board, the decision was taken to allow the appellant-society to give the hall on rent to be used for marriage purposes. The amount offered by the appellant-society was much more than what the Board used to earlier received. The appellant-society and the Board took the stand that the Writ petitioner had suppressed material facts and relevant facts without ulterior motives. The society was functioning for the welfare of the temple and the devotees; it was not functioning as a profit making body. The society was registered under the Travancore Cochin Literacy, Scientific and Charitable Societies Registration Act. The petition was not in essence a public interest litigation but was filed to wreck personal vendetta. The High Court gave certain directions which are contained in paragraphs 8 and 9 of the impugned judgment which are contrary to and/or beyond the pleadings.

Mr. C.S. Vaidyanathan, learned Senior counsel for the appellant-society submitted that the High Court had travelled beyond the grievances made in

the petition and in any event the purported public interest litigation was not maintainable. There was nothing irregular in the action of the Board in granting permission to the appellant-Society. Certain observations made by the High Court were beyond the prayers and the pleadings; and the appellant-Society has been condemned without hearing.

Learned counsel for the Board supported the stand of the appellant. However, learned counsel appearing for the respondent no.1 i.e. the writ petitioner submitted that the appeal was infructuous because of some intervening circumstances and in any event the writ petition was filed in public interest and the High Court's directions are innocuous and do not, in any way, reflect on the credibility of the appellant-society.

The scope and ambit of a public interest litigation in the matter of management of a temple, governed by the provisions of a statutory enactment, came up for consideration of this Court in Guruvayoor Devaswom Managing Committee v. C.K. Rajan, [2003] 7 SCC 546. It was, inter alia, held as follows :

"When the administration of the temple is within its control and it exercises the said power in terms of a statute, the state, it is expected, normally would itself probe into the alleged irregularities. If the State through its machinery as provided for in one Act can arrive at the requisite finding of fact for the purpose of remedying the defects, it may not find it necessary to take recourse to the remedies provided for in another statute. It is trite that recourse to a provision to another statute may be resorted to when the State finds that its powers under the Act governing the field is inadequate. The High Courts and the Supreme Court would not ordinarily issue a writ of mandamus directing the State to carry out its statutory functions in a particular manner. Normally, the Courts would ask the State to perform its statutory functions, if necessary within a time frame and undoubtedly as and when an order is passed by the State in exercise of its power under the Statute, it will examine the correctness or legality thereof by way of judicial review."

We need not go into a primal question in view of the accepted position that with effect from 1.8.2001 the Board, on getting approval of the bye laws, issued a circular dissolving all the Devaswom samities in the various temples with effect from 1.8.2001 and consequently new advisory committees have been constituted.

Above being the position, we feel that nothing further remains to be done in this appeal except noticing that certain observations made, as regards the functioning of the appellant-society and its credibility were unnecessary. For the purpose of adjudication of the dispute before the High Court which only related to the permission granted to use Oottupura, other observations and views expressed by the Division Bench are, therefore, treated as inoperative. Since disputed facts were involved, the High Court should not have gone into them even in respect of the primary grievances of the writ petitioner.

With the aforesaid observations these appeals are disposed of with no orders as to costs.