

CASE NO.:
Appeal (civil) 4721 of 1994

PETITIONER:
TRICHERUMANA @ KOTTIYOOR DEVASWOM & ORS.

Vs.

RESPONDENT:
PRESIDENT, KOTTIYOOR PERUMAL SEVA & ORS.

DATE OF JUDGMENT: 06/09/2001

BENCH:
S. Rajendra Babu & Shivaraj V. Patil

JUDGMENT:

[With C.A.Nos.4722-4723/1994]

J U D G M E N T

RAJENDRA BABU, J. :

A scheme framed in respect of the administration of the Tricherumana @ Kottiyoor Devaswom, appellant No.1 herein, was the subject matter of challenge before the High Court in Writ Petition No.1066/53. By an order made on 5.8.1954, the learned Single Judge before whom the writ petition came up allowed the same and set aside the entire scheme. The matter was carried in appeal.

The Division Bench of the High Court of Madras, on 17.10.1955, disagreed with the learned Single Judge that no part of the scheme can be salvaged and the whole of it must be set aside. The Division Bench of the High Court observed that so long as the scheme is necessary even radical alterations of the scheme can be made by modification of the original scheme and the parties submitted an agreed scheme for consideration of the High Court. The Division Bench, after considering the same, set aside the order of the learned Single Judge and directed the draft scheme, which was attached to that order, would come into force in supersession of the scheme framed by the District Judge of North Malabar in O.P.No.2/49. Subsequently certain amendments were made to that scheme in the matter of (i) nomination of either hereditary or non-hereditary trustee as the Chairman of the Board of Trustees, (ii) the powers of the Chairman of the Board of Trustees to spend the funds of the Trust and (iii) power of the Commissioner to appoint non-hereditary trustees with the hereditary trustees. That scheme was in vogue for quite some time.

Thereafter, a suit was filed in O.S.No.489/69 by the Trustees of the appellant No.1 for permanent injunction against Kottiyur Perumal Seva Sangam and others and obtained an injunction against the President and the Secretary of the Seva Sangam and their agents from trespassing into the property of appellant No.1. O.P. No. 5/75 was filed by the Commissioner of charitable and religious endowments before the Sub-Court, Tellicherry to amend the existing scheme resulting in taking away the powers of the hereditary trustees. O.P.No.153/76 was filed by the President of the Kottiyur Perumal Seva Sangam for similar relief. The Trial Court on consideration of the entire matter dismissed the said petitions and the suit. Thereafter, appeals in M.F.A. Nos. 74/88, 208/88 and 923/88 were preferred before the High Court in the year 1987. The

High Court decided all these matters together by an order made on 6.4.1994. The High Court noticed that the schemes that have been framed earlier had become out-dated and inadequate to cater to the present situation and after considering the fact that large number of worshippers had made alternative arrangements by holding a meeting on 11.10.1964 at Calicut which was attended by several Madhadhipathies when the Kottiyur Perumal Seva Sangam was formed and registered and finding that the existing scheme is not sufficient to protect the interests of appellant No.1 directed modification of the same by inserting several clauses and in particular in relation to non-hereditary trustees.

Special leave petitions were preferred before this Court against that order of the High Court. This Court made an interim order on 12.7.1994 to the following effect:

Leave granted. Issue notice on the stay application. Meanwhile, all the actions taken by the new Board will be subject to the final outcome of these appeals.

Subsequently on 26.9.1994, this Court made the following interim order:

The interim order made earlier shall continue with the addition that the High Court would review the action taken by the Board every six months. The stay applications are disposed of accordingly.

Sri P.Krishnamurthi, learned Senior Advocate appearing for the appellants, contended that when the High Court had not upset the findings recorded by the Trial Court on various complaints made against the hereditary trustees, there is no occasion for the High Court to have altered the scheme and he pointed out that there have been good deal of litigation between the appellants and Sri Kottiyur Perumal Seva Sangam and, therefore, it was inappropriate for the High Court to have nominated the President and the Secretary of Sri Kottiyur Perumal Seva Sangam as the Trustees.

Sri G.Vishwanatha Iyer, learned Senior Advocate appearing for the respondents, submitted that this Court not having granted stay of the impugned order made by the High Court, the scheme as modified by the High Court has been in operation from 1994 and it would not be proper for us to set aside that scheme and interfere with the orders of the High Court so as to modify the scheme now framed by it or even to direct the High Court to frame another scheme. In support of this contention, he relied upon the decision of this Court in Taherakhaton (D) by LRS. Vs. Salambin Mohammad, 1999(1) SCALE 634.

Sri Krishnamurthi, learned Senior Advocate, very strongly contended that the view taken by the High Court cannot be justified and we also prima facie thought there was force in his submission. However, on deeper consideration, we find that it may not be appropriate for us to interfere with the order of the High Court modifying the scheme which is now in force particularly when the same has been in force for more than seven years now. Therefore, we decline to interfere with the order of the High Court. However, we make it clear that it is open to either of the parties or any other appropriate person, who can file a suit in relation to the framing of the scheme, to move the High Court for modification of the scheme framed by it from time to time if any difficulty is found in the working of the scheme either in the matter of constitution of the Board of Trustees or otherwise. We also make it clear that if the High Court finds in respect of any application or petition that it is necessary to hold any enquiry in the matter, it may transfer the entire matter to the Subordinate Court for disposal or call for a finding.

With the aforesaid observations, these appeals stand disposed of

accordingly. No costs.

...J.
[S. RAJENDRA BABU]

...J.
[SHIVARAJ V. PATIL]

SEPTEMBER 6, 2001.

JUDIS