

Nikhil K.V vs Kottiyoor Devaswom

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Court : Kerala

Decided On : May-29-2023

Judge : Honourable Mr. Justice Anil K.Narendran, Honourable Mr. Justice P.G. Ajithkumar

Appeal No. : WP(C)/17213/2023

Appellant : Nikhil K.V

Respondent : Kottiyoor Devaswom

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR MONDAY, THE 29TH DAY OF MAY 2023 / 8TH JYAISHTA, 1945 W.P.(C) NO. 17213 OF 2023 PETITIONER: NIKHIL K.V AGED 26 YEARS, S/O VIDHYANANDAN, KALLANTHOTTATHIL HOUSE, PANNIYAMMALA, KOTTIYOOR, KANNUR DISTRICT, PIN - 670651. BY ADVS. C.P.PEETHAMBARAN RAMSEENA UDAYAKUMAR KARTHIKA PEETHAMBARAN RESPONDENTS: 1 KOTTIYOOR DEVASWOM REPRESENTED BY ITS CHAIRMAN, KOTTIYOOR MAHADEVA TEMPLE, KOTTIYOOR, KANNUR DISTRICT, PIN - 670651. 2 THE

EXECUTIVE OFFICER KOTTIYOOR DEVASWOM, KOTTIYOOR MAHADEVA TEMPLE, KOTTIYOOR, KANNUR DISTRICT, PIN - 670651. BY ADV K.MOHANAKANNAN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.05.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Anil K. Narendran, J.

The petitioner is the successful bidder for collecting

parking fees from the parking ground of Kottiyoor Sree Mahadeva Temple, which is a controlled institution under the Malabar Devaswom Board. The petitioner has filed this Writ Petition, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the respondents, i.e., Kottiyoor Devaswom, represented by its Chairman and the Executive Officer and Kottiyoor Devaswom to provide adequate facilities, including the free ingress and egress of vehicles carrying pilgrims to and from the parking ground allotted to the

petitioner, as indicated in Ext.P1, after removing the unauthorised temporary sheds and after clearing/levelling the parking ground by taking appropriate measures, either by removing the rubbles, stones, granites, etc., scattered over the ground in question or cover the same by putting sufficient earth.

2. Heard the learned counsel for the petitioner.

3. In Bihar Eastern Gangetic Fishermen

Cooperative Society Ltd. v. Sipahi Singh [(1977) 4 SCC 145], a Three-Judge Bench of the Apex Court held that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within

the limit of their jurisdiction.

4. In *Oriental Bank of Commerce v. Sunder Lal*

Jain [(2008) 2 SCC 280] the Apex Court held that in order

that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. In the said decision, the Apex Court noticed that the principles on which a writ of mandamus can be issued have been stated in 'The Law of Extraordinary Legal Remedies' by F. G. Ferris

and F. G. Ferris, Jr. that, mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice.

5. In *State of U.P. v. Harish Chandra* [(1996) 9

SCC 309] the Apex Court held that under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law.

6. The 1st respondent Kottiyoor Devaswom is a controlled institution under the Malabar Devaswom Board. Viewed in the light of the law laid down in the decisions

referred to supra, the petitioner, who is the successful bidder for collecting parking fee from the Devaswom parking ground, cannot invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India seeking a writ of mandamus against Kottiyoor Devaswom or its Executive Officer. In such circumstances, this writ petition fails on the ground of maintainability and the same is accordingly

dismissed. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE
dkr APPENDIX OF WP(C) 17213/2023 PETITIONER EXHIBITS Exhibit P1 TRUE
COPY OF THE INTIMATION LETTER DATED 23/5/2023 ISSUED BY THE 2ND
RESPONDENT TO THE STATION HOUSE OFFICER, KELAKAM POLICE
STATION

Exhibit P2 TRUE COPY OF THE RECEIPT DATE

ALLOTTED TO THE PETITIONER IN AUCTION Exhibit P6 TRUE COPY OF THE
REPRESENTATION DATED RECEIPT SENT BY THE PETITIONER TO THE
2ND RESPONDENT

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