

Peralassery Devaswom Vs. Hussain

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Court : Kerala

Decided On : Nov-24-2014

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : Peralassery Devaswom

Respondent : Hussain

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN MONDAY, THE 24TH DAY OF NOVEMBER 2014 3RD AGRAHAYANA, 1936 CRP(LR).No. 35 of 2014 () ----- I.A. 85/1996 IN A.A. 93/1996 OF APPELATE AUTHORITY (LR), KANNUR. O.A. 15612/1976 OF SPECIAL TAHSILDAR, LAND TRIBUNAL, CANNANORE. REVISION PETITIONER(S)/APPELLANT/RESPONDENT: ----- PERALASSERY DEVASWOM, PERALASSERY, MUNDALUR POST, PIN-670622, KANNUR DISTRICT, REPRESENTED BY ITS EXECUTIVE OFFICER/ MANAGER. BY ADVS.SRI.K.P.SUDHEER SRI.ARUN MATHEW VADAKKAN RESPONDENT(S)/SUPPLEMENTAL RESPONDENTS/LEGAL REPRESENTATIVE OF PETITIONER: ----- 1. HUSSAIN, S/O. NELLOLI ASSAINAR, MAKKERI AMSOM, MUNDALORE DESOM, P.O.MUNDALUR - 670622 VIA.CHOVVA, KANNUR DISTRICT, NOW RESIDING AT "SITHARA" VADAKKUMPAD, P.O.MUNDALUR-670 622 KANNUR DISTRICT.

2. MAJEED, S/O.NELLOLI ASSAYINAR, MAKKERI AMSOM, MUNDALORE DESOM, P.O.MUNDALUR - 670622, VIA.CHOVVA, KANNUR DISTRICT.

3. NABEESU, MAKKERI AMSOM, MUNDALORE DESOM, P.O.MUNDALUR - 670622, VIA.CHOVVA, KANNUR DISTRICT.

4. SPECIAL TAHSILDAR (LR), LAND TRIBUNAL, KANNUR-670 001. R1 -R3BY ADV. SRI.GRASHIOUS KURIAKOSE (SR.) ADV. SRI.GEORGE MATHEWS R4 BY GOVERNMENT PLEADER SRI. REJI JOSEPH. THIS CRP (LAND REFORMS ACT) HAVING BEEN FINALLY HEARD ON2411-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: P. BHAVADASAN, J.

----- C.R.P.(LR). No. 35 of 2014 -----

- - - Dated this the 24th day of November, 2014.

ORDER

This Civil Revision Petition under Section 103 of the Kerala Land Reforms Act is directed against the order of the Appellate Authority (Land Reforms), Kannur whereby the appellate authority dismissed I.A. 85 of 1996, a petition to condone the delay in filing the appeal and consequently the appeal also.

2. The respondents filed an application under Section 72B of the Kerala Land Reforms Act for assignment of right, title and interest over the property belonging to Devaswom in respect of the property contained in the application. As per order dated 12.10.1976, it is seen that the Land Tribunal after allegedly following the procedures as required under the law allowed the application and ordered assignment. Long thereafter after about 20 years the CRP(LR).35/2014. 2 Executive Officer of the Peralassery Devaswom moved the appellate authority challenging the issuance of purchase certificate in favour of the respondents pointing out that the property being a Devaswom property, it is exempted under Section 3(1) of the Kerala Land Reforms Act and no assignment could have been granted. By way of abundant caution he also filed I.A. 85 of 1996 to condone the delay of 20 years days in filing the appeal.

3. As already discussed, the appellate authority dismissed the delay condonation petition.

4. Sri. K.P. Sudheer, learned counsel appearing for the petitioner contended that the property belongs to the idol and idol is a perpetual minor and there is no question of limitation in the facts of the case. This vital aspect has been lost sight of by the authority below and if there is no question of limitation, the appellate authority was obliged under the law to consider the case on merits. In support of his CRP(LR).35/2014. 3 contention, he relied on the decision reported in Travancore Devaswom Board v. Mohanan Nair (2013 (3) K.L.T. 132). Learned counsel also pointed out that there cannot be of much dispute that the property belongs to Devaswom and if that be so, the exemption under Section 3(1) of the Kerala Land Reforms Act also applies and these vital aspects have been lost sight of by the appellate authority. For the proposition that the property of the Devaswom cannot be assigned as there is exemption under Section 3(1) of the Act, counsel relied on the decision earlier referred to. Accordingly, it is contended that the order is clearly unsustainable.

5. Sri. Gracious Kuriakose, learned Senior Counsel appearing for the respondents contended that on an earlier occasion the petitioner had approached this Court by way of C.R.P. 1411 of 2001 complaining about the same issue and this Court by order dated 26.10.2006 disposed of the revision petition directing the appellate authority to ascertain whether CRP(LR).35/2014. 4 notice of the proceedings had been served on the petitioner before this Court and thereafter dispose of the matter on merits.

6. It is therefore contended that the remand was for a limited purpose for ascertaining whether notice of the proceedings were given to the Devaswom and the petitioner now cannot enlarge the scope of remand. After remand the appellate authority on a perusal of the records and on the basis of the evidence adduced before it, came to the conclusion that the Devaswom was aware of the proceedings and therefore dismissed the application for condonation of delay. It is accordingly contended that there is no merit in this revision petition and it is only to be dismissed.

7. The first question that arises for consideration is whether there is any delay at all. The issue need not detain this Court for the simple reason that this question has been considered in the decision reported in Travancore Devaswom CRP(LR).35/2014. 5 Board v. Mohanan Nair (2013(2) K.L.T132. Almost in an identical situation, this Court has observed as follows:

"3. The relevant principles under the Hindu Law will show that the Deity is always treated similar to that of a minor and there are some points of similarity between a minor and a Hindu idol. This Court therefore is the guardian of the Deity and apart from the jurisdiction under S.103 of the Land Reforms Act, viz., the powers of revision, this Court is having inherent jurisdiction and the doctrine of *parens patriae* will also apply in exercising the jurisdiction. Therefore, when a complaint has been raised by the Advisory Committee which was formed by the devotees of the Temple about the loss of properties of the Temple itself, the truth of the same can be gone into by this Court in these proceedings." 8. If as a matter of fact Law of Limitation does not apply, the appellate authority was obliged to consider the appeal on merits.

9. True, in C.R.P. 1411 of 2001, this Court directed the appellate authority to consider whether there is any CRP(LR).35/2014. 6 materials to show that the Devaswom had notice of the proceedings. It is also true that the appellate authority after perusal of the records and after appreciating the evidence on record came to the conclusion that the Devaswom had notice. But that by itself is not conclusive. That is only for the question of delay.

10. One should remember that the question of limitation can be a pure question of law and if that be so, principle of *res judicata* is not applicable to such a case. It cannot be disputed that idol is a perpetual minor and going by the decision already referred to, question of limitation does not arise.

11. The next question that arises for consideration is whether the appellate authority was obliged to consider the case on merits. Learned counsel for the petitioner has raised an issue that being the property of the Devaswom, it falls within the exemption granted under Section 3(1) of the Act CRP(LR).35/2014. 7 and that aspect has not been considered at all. Learned counsel referred to the

various aspects of the case and the boundaries shown in the purchase certificate and also the Revenue Inspector's report etc. and pointed out that there has not been adherence to the procedures to be followed in the case of issuance of purchase certificate and this Court had occasion to consider the legality of the issuance of purchase certificate without following the procedures. This Court went on to point out that the purchase certificate so obtained is illegal and no right accrues on that basis.

12. The question as to whether there was proper notice alone was considered by the appellate authority. The appeal has not been considered on merits. The appeal was dismissed consequent on the dismissal of the delay condonation petition. Now it has been found that there is no question of delay, the appellate authority has to consider the appeal on merits and reach a conclusion in that regard. It will CRP(LR).35/2014. 8 not be proper for this Court to strip the appellate authority and substitute by revisional jurisdiction to by-pass the appellate authority. It is for the appellate authority to consider the case on merits and come to the conclusion. For the above reasons, this revision is allowed and the impugned order is set aside and the delay stand condoned and the appellate authority is directed to take the appeal on file and dispose it of on merits, in accordance with law and in the light of the observations made by this court in this Order. The parties shall appear before the appellate authority on 18.12.2014 and the appellate authority is directed to dispose of the appeal as expeditiously as possible, at any rate, within a period of three months from the date of appearance of the parties. P. BHAVADASAN, JUDGE sb.

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