

SUPREME COURT OF INDIA

P.R. Murlidharan and Others

Vs

Swami Dharmananda Theertha Padar and Others

Appeal (Civil) 1634 of 2006 (Arising Out of Slp (C) No. 22268 of 2004)

(S. B. Sinha and P. K. Balasubramanyan, JJ)

10.03.2006

JUDGMENT

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 Sthiradhayakshan and to vest his powers and duties in the President of the Seva Sangham. Kailasanatha allegedly served as Sthiradhayakshan 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 Sthiradhayakshan 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 Sthiradhayakshan. 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 Sthiradhayakshan 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 Sthiradhayakshan and Madathipathi 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 Sthiradhayakshan and Madathipathi of the Vadayampadi Ashramam. Petitioner be given effective police protection so as to discharge the function as Sthiradhayakshan and Madathipathi as per Ext. P1 trust deed for his peaceful residence in the Ashramam"

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.

Hon'ble Justice P.K. BALASUBRAMANYAN J.

1. I respectfully agree with the reasoning and conclusion of my learned Brother and agree that the appeal has to be allowed and the decision of the High Court set aside.

2. A Writ Petition under the guise of seeking a writ of mandamus directing the police authorities to give protection to a Writ Petitioner, cannot be made a forum for adjudicating on civil rights. It is one thing to approach the High Court, for issuance of such a writ on a plea that a particular party has not obeyed a decree or an order of injunction passed in favour of the Writ Petitioner, was deliberately flouting that decree or order and in spite of the petitioner applying for it, the police authorities are not giving him the needed protection in terms of the decree or order passed by a court with jurisdiction. But, it is quite another thing to seek a writ of mandamus directing protection in respect of property, status or right which remains to be adjudicated upon and when such an adjudication can only be got done in a properly instituted civil suit. It would be an abuse of process for a Writ Petitioner to approach the High Court under Article 226 of the Constitution of India seeking a writ of mandamus directing the police authorities to protect his claimed possession of a property without first establishing his possession in an appropriate civil court. The temptation to grant relief in cases of this nature should be resisted by the High Court. The wide jurisdiction under Article 226 of the Constitution of India would remain effective and meaningful only when it is exercised prudently and in appropriate situations.

3. In the case on hand, various disputed questions arose based on a deed of trust and the facts pleaded by the Writ Petitioner and controverted by the other side. The High Court should have normally directed the Writ Petitioner to have his rights adjudicated upon, in an appropriate suit in a civil court. The fact that a Writ Petitioner may be barred from approaching the civil court, in view of Order IX Rule 9 of the Code of Civil Procedure, or some other provisions, is no ground for the High Court to take upon itself, under Article 226 of the Constitution of India, the duty to adjudicate on the civil rights of parties for the purpose of deciding whether a writ of mandamus could be issued to the police authorities for the protection of the alleged rights of the Writ Petitioner. A writ of mandamus directing the police authorities to give protection to the person of a Writ Petitioner can be issued, when the court is satisfied that there is a threat to his person and the authorities have failed to perform their duties and it is different from granting relief for the first time to a person either to allegedly protect his right to property or his right to an office, especially when the pleadings themselves disclose that disputed questions are involved. My learned Brother has rightly pointed out that the High Court was in error in proceeding to adjudicate on the rights and obligations arising out of the trust deed merely based on the affidavits and the deed itself. I fully agree with my learned Brother that the High Court should not have undertaken such an exercise on the basis that the right of the Writ Petitioner under Article 21 of the Constitution of India is sought to be affected by the actions of the contesting respondents and their supporters and that can be prevented by the issue of the writ of mandamus prayed for.

4. A writ for "police protection" so-called, has only a limited scope, as, when the court is

approached for protection of rights declared by a decree or by an order passed by a civil court. It cannot be extended to cases where rights have not been determined either finally by the civil court or, at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order.

5. Having said this, I agree with my learned Brother and allow the appeal, set aside the order of the High Court and dismiss the Writ Petition filed by the first respondent .