Chovva Educational Society Vs State of Kerala

Court: High Court Of Kerala

Date of Decision: Feb. 28, 2006

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 125, 127
Kerala Land Reforms Act, 1963 â€" Section 106, 26, 3(1), 73(8)
Kerala Land Reforms Rules, 1970 â€" Rule 142
Kerala Revenue Recovery Act, 1968 â€" Section 2, 71

Citation: (2006) 2 KLT 340

Hon'ble Judges: V.K. Bali, C.J; J.B. Koshy, J

Bench: Division Bench

Advocate: O.V. Radhakrishnan, for the Appellant; M.M. Abdul Aziz and K. Lakshminarayanan, Governmet Pleader, for the Respondent

Final Decision: Allowed

Judgement

V.K. Bali, C.J.
Whereas the appellant, petitioner in the original lis, is a tenant, Arakkal Aadiraja Sajida Beebi, the 5th respondent herein,

is the land owner. The land and buildings were leased out to the appellant for building up and conducting a high school. It was initially let out by the

predecessor of the 5th respondent, Mariyumma Beevi, the former president of the appellant society on an yearly rent of Rs. 400/- on 29th

October, 1947, Admittedly the property is still used for conducting the high school. There was no renewal of rent and therefore the 5th respondent

claiming the property to be commercial filed an application u/s 106 of the Kerala Land Reforms Act read with Rule 142 of the Rules framed

thereunder for fixation of fair rent. It has been the case of the 5lh respondent that marupattom was executed for a meagre amount only due to the

fact that the tharwad belonged to one Muslim Kingdom and benevolence of her predecessor. After coming into effect of the Kerala Land Reforms

Act the 5th respondent and her family disposed of the properties and there was an agreement for replacing the bungalow for new building and an

amount of Rs. 2500/- was to be reduced in the amount of structures in case of vacating the property subject matter of lease. The appellant was

collecting fees from the students in spite of enjoying benefits from the Government and the land leased out to them. The 5th respondent claimed

that the amount offered for removal of bungalow for new building will not be given to her. The property was situated in a very important locality in

Chovva and on the side of a National Highway. It is broadly on the pleadings as mentioned above, that the 5th respondent claimed refixation of fair

rent. The Special Deputy Collector exercising the powers of Land Tribunal under the provisions of the Kerala Land Reforms Act vide orders

dated 23.7.1999 held that 5th respondent is entitled to refixation of rent at the rate of Rs. 2000/- per month from 20.5.1979 to 19.5.1991 and

rent at the rate of Rs. 5000/- per month from 20.5.1991 onwards. The appellant was to pay the arrears of rent with 10% interest to the 5th

respondent from the date of the order. The Land Tribunal on the basis of the order dated 23.7.1999, Ext. P2, on an application filed by the 5lh

respondent for realisation of the arrears of rent, by observing that the appellant had not complied with the order of the Tribunal issued a requisition

to the District Collector, Kannur for recovery of the amount as arrears of land revenue. The orders Exts. P2 and P4 were challenged by the

appellant by way of an Original Petition bearing No. 19769 of 2000 which has been dismissed by a learned Single Judge of this Court vide

judgment dated 15th July, 2004. It is against this order of the learned Single Judge that the present writ appeal has been filed.

2. Before we might proceed any further in this case we would like to mention that by a detailed order dated 24th August, 2004 a learned Division

Bench then seized of the appeal dealing with all the contentions of the learned Counsel for the parties granted stay pending disposal of the Writ

Appeal. The learned Division Bench while granting stay to the appellant made a reference to Sections 3(1)(iii), 73(8) and 106 of the Kerala Land

Reforms Act. The Court also took into consideration a Division Bench judgment of this Court in Joseph v. Gulam Gasool 2002 (1) KLT 328

relied on behalf of the appellant and a judgment of this Court in Aliyar v. Pathu 1988 (2) KLT 446 relied on by the 5th respondent. The Court also

took into consideration the contentions raised on behalf of the 5th respondent that every Tribunal had inherent powers to resort to the provisions of

the Kerala Revenue Recovery Act, but, as mentioned above, by a detailed order granted stay which is continuing till date.

3. It has been the common case of parties that lease in favour of the appellant was for commercial purposes. The law laid down by this Court in

Joseph v. Gulam Gasool (supra) that the Land Tribunal has no jurisdiction to entertain the application with regard to matters exempted from the

operation of entire provision of Section 26 in the case of industrial or commercial putposes falling within the ambit of Clause (iii) of Sub-section (1)

of Section 3 of the Land Reforms Act, 1963 is not in dispute either. It is relevant to mention here that the learned Single Judge in the impugned

judgment referred to the Division Bench judgment of this Court in Joseph v. Gulam Gasool, (supra), but dismissed the Original Petition by

observing that in the absence of any express statutory provision the Land Tribunal must be conceded necessary power to implement its order

effectively. As otherwise, the power conferred u/s 106 for variation of the enhancement of rent will be rendered futile. In support of this view, the

learned Single Judge placed reliance upon the decision of this Court in Aliyar v. Pathu 1988 (2) KLT 446 and M.G. University v. Millu Dandapani

2000 (1) KLT 351 : 2000 (1) KLJ 1. Without disputing the correctness of the decision rendered by the Division Bench of this Court in Joseph v.

Gulam Gazool (supra) the impugned judgment is sought to be defended on the very ground taken by the learned Single Judge as mentioned above.

4. We have heard learned Counsel appearing for the parties and with their assistance examined the records of the case. As per Section 2(a) of the

Kerala Revenue Recovery Act, 1968, hereinafter referred to as the Act of 1968, "arrears of public revenue due on land" means the whole or any

portion of any kist or instalment of such revenue not paid on the day on which it falls due according to the kistbandy or any engagement or usage.

By virtue of the provision contained in Section 71 of the Act of 1968 the Government has power to declare the Act applicable to any institution.

Section 71 reads as follows:

71. Power to Government to declare the Act applicable to any institution: - The Government may, by notification in the Gazette, declare, if they are

satisfied that it is necessary to do so in public interest, that the provisions of this Act shall be applicable to the recovery of amounts due from any

person or class of persons to any specified institution or any class or classes of institutions, and thereupon all the provisions of this Act shall be

applicable to such recovery.

5. The arrears of rent as originally fixed or evidenced through the order Ext. P2 are not arrears of public revenue. So also no notification has been

issued by the Government declaring in the public interest, that the provisions of the Act of 1968 shall be applicable to recovery of amount due from

the appellant, nor has the institution of the appellant been specified for such recovery as per the provisions contained in Section 71. As mentioned

above, it has been held by a Division Bench of this Court in Joseph v. Gulam Gazool (supra) that Section 3(1)(iii) of the Kerala Land Reforms Act

excludes the application of Section 73(8) of the said Act and the correctness of the decision as mentioned above is not under challenge. Learned

Counsel for the 5th respondent, however, as mentioned above, seeks to defend the impugned judgment on the only ground as stated above. We

are of the considered view that this is not a case where the law laid down by this Court in Aliyar v. Pathu 1998 (2) KLT 446 (supra) or M.G.

University v. Millu Dandapani 2000 (1) KLT 351 : 2000 (1) KLJ 1 (supra) would possibly apply. The facts of the case aforesaid reveal that the

respondents in the case aforesaid who were divorced wife and minor children had obtained an order against the revision petitioner former husband

of the first respondent and father of respondents 2 and 3 u/s 125 of the Code of Criminal Procedure directing the revision petitioner to pay

maintenance to the children at the rate of Rs. 25/- and Rs. 20/- per month respectively, whereas the claim of the divorced wife was rejected. The

Sessions Court in revision directed the former husband to pay maintenance to the divorced wife at the rate of Rs. 55/- per month and the order

was confirmed by the High Court in 1984. The respondents subsequently filed a C.M.P. u/s 127 of the Code seeking alteration by way of

enhancement of the quantum of maintenance ordered to be paid to them on the ground of change of circumstances such as increase in cost of

living, etc. The revision petitioner filed a counter denying the alleged change of circumstances. The learned Magistrate passed an order enhancing

the quantum of maintenance payable to the respondents to Rs. 100/-, Rs. 50/- and Rs. 40/- per month respectively. It is this order which was

under challenge. The learned Single Judge who heard the revision petition referred the same to a Division Bench in view of the contention that the

application u/s 127 of the Code should have been disposed of not under the provisions of the Muslim Women (Protection of Rights on Divorce)

Act, 1986. One of the questions that came to be debated was with regard to the power of the Court to do while doing justice when there was

absence of provision in the Code. It is in that context that in paragraph 22 it was observed as follows:

It is a well known rule of statutory construction that a tribunal or body should be considered to be endowed with such ancillary or incidental

powers as are necessary to discharge its functions for the purpose of doing justice between the parties unless there is any indication to the contrary

in the statute, See Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, . An express grant of statutory power carries with

it by necessary implication the authority to use all reasonable means to make such grant effective. (See Sutherland"s Statutory Construction, Third

edition, Articls 5401 and 5402). Where an Act confers jurisdiction, it impliedly also grants the power of doing all such acts or employing such

means, as are essentially necessary to its execution. See Maxwell on Interpretation of Statutes, eleventh edition at page 350. This passage is

quoted with approval in Income Tax Officer, Cannanore v. M.K. Mohammed Kunhi (1969) 71 ITR 815 and Dharmadas v. S.T.A.T. 1962 KLT

505 (FB). Every court is deemed to possess such inherent power, in the absence of any provision either prohibiting or providing for the exercise of

such power, in respect of any matter as is really essential for its effective and smooth functioning in accordance with law. Such power is inherent in

its very constitution. This power, naturally, has to be exercised sparingly and with due care and caution and only in appropriate cases either to give

effect to orders of court or to prevent abuse of process of court or to secure the ends of justice it has to be exercised judiciously and not arbitrarily

or capriciously. The exercise must be based on sound general principles and not in conflict with them or with the intention of the legislature as

indicated in the statutory provision.

6. In M.G. University and Ors. v. Millu Dandapani and Anr. (supra) a Division Bench of this Court held that wherever a genuine plea is raised it is

always open to the court to accept the said plea and adopt a fair and reasonable course in the facts and circumstances of the case. It was further

held that where the discretionary exercise of the court is called for, nothing precludes the court from exercising such discretionary powers. When

the Courts are satisfied prima facie that the matter requires to be looked into, it was the duty of the Court to satisfy itself about it in the best manner

possible. In the facts and circumstances of the case, the Court considered it necessary to revaluate the answer papers and the same was ordered.

The court also held that all procedure is always open to a court which is not expressly prohibited and no rule of the court has laid down that the

courts shall not peruse papers and order revaluation if the court requires it in warranting circumstances and further that the court has power to

mould the relief to suit the requirements. In addition to the two judgments mentioned above learned Counsel for the 5th respondent also relied

upon a judgment of the Division Bench of this Court in Dharmadas v. S.T.A.T. 1962 KLT 505, paragraph 13 of the judgment pressed into service

reads as follows:

It was suggested that the absence of a provision making the Code of Civil Procedure, 1908, applicable to the proceedings indicates that the power

of remand was not intended to be granted. This is clearly wrong. If the power of remand is implicit in an appellate jurisdiction on the ground that it

is incidental to, and essential for, the proper exercise of that jurisdiction, the fact that the Code of Civil Procedure, 1908, has not been made

applicable can have no reaction on the existence or otherwise of that power. It may be that if some of the provisions of the Code are made

applicable to a tribunal and others left out, a contention is possible that the provisions left out, have been deliberately excluded. Such is not the case

before us.

7. The judicial precedents relied upon by the learned Counsel for the 5th respondent, in our view, are not applicable on the facts of the present

case. There is clear indication available in the statute and in particular the provisions referred to above that revenue recovery proceedings cannot

be resorted to with regard to arrears of rent due to an individual and not covered by the notification u/s 71. Arrears of rent could not partake the

character of arrears of public revenue due on land and thus, the Court could not resort to provisions of Revenue Recovery Act. It is only as per

provisions of Section 73(8) of the Kerala Land Reforms Act that resort could be made to provisions of the Kerala Revenue Recovery Act and the

arrears could be recovered as land revenue. But application u/s 73(8) is specifically excluded by the provisions contained in Section 3(1)(iii) of the

Land Reforms Act. There is, thus a specific bar contained in Section 3(1)(iii) of the Land Reforms Act so as to recover the rent as arrears of land

revenue. Every court or tribunal may, thus, have the power to implement its orders, but recovery of arrears of rent that may pertain to commercial

building is specifically barred and therefore, the principle of law enunciated in the judicial precedents relied upon by the counsel for the 5th

respondent would not apply. It is pertinent to mention that the 5th respondent has already filed a civil suit for recovery of the arrears of rent as

determined by the order Ext. P2 and further that the appellant has also filed an Original Petition challenging the order Ext. P2 which are still

pending.

In view of the discussion made above, this appeal is allowed. Consequently, the order impugned in the present Writ Appeal passed by the learned

Single Judge is set aside. Costs are, however, made easy.