Umaprabha Thampuratti Vs. State of Kerala and ors.

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Court : Kerala

Decided On : Dec-01-1959

Reported in : AIR1960Ker186

Judge : S. Velu Pillai, J.

Acts : Constitution of India - Article 226

Appeal No. : O.P. No. 739 of 1958

Appellant : Umaprabha Thampuratti

Respondent : State of Kerala and ors.

Advocate for Def. : Govt. Pleader for Respondents 1 and 3, and P.K. Achan, Adv. for Respondent 2

Advocate for Pet/Ap. : K.N. Narayanan Nair and; N. Sudhakaran, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

S. Velu Pillai, J.

1. The petitioner is a junior member, and the second respondent is the senior most malemember of Chirakkal family which migrated from Malbar to the former Travancore State. The matter in dispute between them, relates to their rival claims to an annual grant of about 3900 and odd rupees, and the ultimate question is. whether this is a grant solely to the senior member of the family for the time being, or to the family as a whole in which each member is entitled to a per capita share. The second respondent petitioned the Government of Kerala on 4-2-1957, for registering him. as the holder of the grant, or Malikhana as it is called. On 20-3-1957, some of the junior members of the family including the petitioner, objected to such registry, and claimed that a per capita division of the Malikhana may be made amongst the members of the family. On 30-4-1958, Government passed an order, Ext. R 1, registering the second respondent as the Malikhana holder. Some of the junior 'members of the family, but not the petitioner, moved Government for a reconsideration of the above order and as a result, the operation of that order was stayed. Afterwards on 5-11-1958, Government vacated the stay order and pursuant to Ext. Rule 1, directed payment to be made to the second respondent byorder, Ext. P-2. which is now sought to be quashed in these proceedings.

2. The question was agitated before me as to the nature of the grant. The learned counsel for the petitioner contended, that Malikhana grant is a grant to the family and is not a grant to the senior member of the family as pertaining to his 'sthanam'and relied on the observations of Sundara Aiyar in his text-book on Malabar Law, Chapter XIX, page 250, that a grant was made to Chirakkal family. He also relied on the definition of the term 'Malikhana' in Logan's Malabar Law, Volume, II, Appendix XIII, page cciv. Aitchison Treaties, Volume X. pages 14 and 111, contained references to grants to Chiefs and Rulers in Malabar and extracts of an agreement entered into by Chirakkal family with The East India Company. It is not possible to decide this issue on the materialsbefore me and a writ cannot be issued treating the grant in question, as one which enures to the family as a whole. It is for the petitioner to establish her right by a fresh suit properly framed for the purpose.

3. It was then contended by the learned counsel, that the authority vested with jurisdiction under the Pensions Act, 1871, for registeringthe right renting to 'Pensidns and . Grants ofl money on land revenue', Malikhana being such ' grant, is the District Collector, or the Deputy Commissioner, or any other officer duly authorised, and that therefore Government had no jurisdiction to pass Ext. R-l or P-2 order, and on that ground Ext. P-2 is liable to be quashed. To this, objection was taken on behalf of the respond_ents, that the petitioner having submitted to the jurisdiction of Government, cannot now invoke Article 226 of the Constitution.

It seems quite clear, by reason of the petition presented to Government on. 20-3-1957, not only by way of opposing the claim of the second respondent to registry as Malikhana-holder, but also claiming the per capita shares in the grant for herself and other members of the family, that the petitioner had submitted to the jurisdiction of Government, and had even invoked such jurisdiction in her favour. In Pannalal Binjraj v. Union of India, (S) AIR 1957 SC 397 at p. 412, the petitioner, who objected before the Supreme Court to the transfer of income-tax cases under Section 5(7A) of the Income-tax Act. 1922 but had earlier submitted to the jurisdiction of the Income-tax Officer to whom other cases had been previously transferred, was he]d 'disentitled to any relief at the hands of the court' under Article 32 of the Constitution.

The principle was examined by Chagla, C.J. in Gandhinagar Motor Transport Society v. State of Bombay, AIR 1954 Bom 202, and was stated to be, that the High Court, in the exercise of the) special jurisdiction conferred on it by Articles 226 and 227 of the Constitution, can set its own limitations tq the exercise of such jurisdiction and regulate its procedure. In this process, the High Court is entitled to know, what the tribunal whose action is challenged, had to say about its jurisdiction, which could only be, if the objection to it was raised before it; in other words, the tribunal must have had an opportunity to decide that it had no jurisdiction before the High Court is called upon to pronounce itself. In this respect, there may well be a difference between a suit, in which an objection pertaining to jurisdiction cuuld be raised for the first time in the highest court, and a proceeding under Article 226. The High Court may very well ask a petitioner, who invokes Article 226, in the words employed by Chagla, C.J.:

'It.was open to you to raise that point before the tribunal whoso order you arc , challenging. You have sat on the fence, you have taken a chance of the tribunal! deciding in your favour, and it is not open to you now to come to us and ask for a writ'.

The learned Chief Justice has also relied on the observations in Rex v. Williams, Ex parte Phillips, (1914) 1 K. B 608, that a party may be precluded by his conduct from claiming a writ, whether 'the proceedings challenged are void or voidable. If they arc void, it is true, that no conduct of his wilt validate them; but such considerations do not affect the principle on which the court acts, in granting or refusing the writ of cer-tiorari.' In Jagajit Cotton Mills v. Industrial Tribunal, AIR 195g Pnnj 389, after an examination of the law in England, and America, and in this country, Grover, J. formulated the following rules:

'1. The Court has always the power and the discretion to grant or refuse to grant the writ and while exercising discretion it will take into consideration all the relevant factors.

2. The failure to raise objection to defect or lack of jurisdiction of the tribunal before it is always a material and relevant factor and must bo taken into account and it makes no difference whether such a defect is patent or latent.

3. Ordinarily such a conduct would precludy the petitioner from claiming the writ unless a cogent explanation is furnished by stating the necessary facts upon affidavit which should satisfy the Court that the failure to raise the objection relating to jurisdiction was not deliberate, or that the petitioner had no knowledge of facts on which the objection could be based.

4. It would naturally depend on the facts of each case whether such conduct has been established as would disentitle the petitioner to any such relief.'

The learned judge distinguished mother case relied on for the petitioner and decided by Chagla, C.J. in S.C. Prashar v. Vasantsen Dwarkadas, (S) AIR 1956 Bom 530, as dealing with a writ of prohibition, as tp which, different considerations may apply. A similar view has been, taken in a number of decisions of this court. In Venkatasubramonia Iyer v, Catholic Bank of India Ltd.. 1957 Ker LT 411: (AIR 1957 Kerala 109). the petitioner was held to be precluded from challenging the jurisdiction of Government to entertain a revision, under Section 16 of the Building Lease and Rent Control Order 1950, to which he had submitted. The same conclusion was reached by Vaidialingam, J., on an examination of various decided cases, on the subject, in Gopalan v. Central Road Traffic Board, Trivandrum, 1958 Ker LT 410: (AIR 1958 Kerala 841), S. M. Rawther v. Agricultural Income-tax and Sales-tax Officer, 1958 Ker LT 958 decided by M.S. Menon J. and Ponkunnam Erattupetta Motor Service v. Regional Transport Authority Kottayam, 1958 Ker LT 1034 decided by N. Varadaraja Iyengar, J. are two other cases of this court in point.

It now remains to apply the rules formulated inAIR 1959 Punj 389. Thp court has the power to grantor refuse to grant a writ of certiorari. The failureto raise objection to the jurisdiction of the inferiorcourt is a relevant point to be borne in mind; Isee nothing to take this case out of the ordinaryrule which is to refuse a writ in such circumstances. The explanation suggested by counsel torsubmission to jurisdiction, that the petitioner was not aware that it was a pension or grant within the meaning of the Pensions Act, is not sufficientto attract the exception to the rule as formulated.I therefore dismiss this original petition, hut without costs.