



2023:KER:79390

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

FRIDAY, THE 8TH DAY OF DECEMBER 2023 / 17TH AGRAHAYANA, 1945

OP(C) NO. 2704 OF 2023

AGAINST THE ORDER DATED 15/11/2023 IN I.A.NO.2/2023 IN OS 191/2010

OF MUNSIF COURT, CHENGANNUR

PETITIONERS/RESPONDENTS IN I.A.NO.2/2023 IN

O.S.NO.191/2010/PLAINTIFFS IN O.S.:

1 RAMACHANDRAN POTTY,
AGED 43 YEARS
S/O. VENKADACHALAM POTTY, KADACKETHU MADATHIL,
THITTAMEL MURI, CHENGANNUR VILLAGE , CHENGANNUR TALUK,
PIN - 689121

2 RAMABHADRAN POTTY,
AGED 40 YEARS
S/O. VENKADACHALAM POTTY, KADACKETHU MADATHIL,
THITTAMEL MURI, CHENGANNUR VILLAGE, CHENGANNUR TALUK,
PIN - 689121

BY ADVS.
R.RANJANIE
R.LAKSHMI NARAYAN

RESPONDENTS/PETITIONER IN I.A.NO.2/2023 AND NOT PARTIES TO I.A.IN

O.S.NO.191/2010/DEFENDANTS IN O.S.:

1 TRAVANCORE DEVASWOM BOARD, DEVASWOM BOARD OFFICE,
NANTHANCODE JUNCTION, THIRUVANANTHAPURAM - REPRESENTED
BY ITS SECRETARY GAYATHRIDEVI S, PIN - 695003

2 THE ASSISTANT COMMISSIONER,
TRAVANCORE DEVASWOM BOARD, ARANMULA GROUP, ARANMULA
VILLAGE, KOZHENCHERRY TALUK, PATHANAMTHITTA DISTRICT,
PIN - 689533

3 THE ADMINISTRATIVE OFFICER,
CHENGANNUR MAHADEVA TEMPLE, CHENGANNUR, ALAPPUZHA
DISTRICT, PIN - 689121

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 08.12.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

After twelve years of initiation of suit, it was dismissed by the trial court on a preliminary issue, regarding bar under Section 55 of the Travancore-Cochin Hindu Religious Institutions Act, 1950 (for short, 'the Act'), against which the plaintiffs came up.

2. Ext.P12 is the application submitted by the defendant for framing and hearing a preliminary issue regarding maintainability of the suit, to which, the plaintiff filed Ext.P13 objection. It appears that the trial court has committed a serious mistake. In fact, the bar under Section 55 of the Act is a partial restraint in instituting a suit within the period of advance notice in writing.

3. Before going into the abovesaid



provision and its application, it is necessary to consider the legality and permissibility of a condition precedent to be complied with so as to initiate legal proceedings before a competent court. The normal principle is that there cannot be any restraint against institution of a litigation before a civil court. But the said principle is subject to atleast two exceptions; a debarring provision by which the jurisdiction of a civil court is ousted and vested with some other court or authority by providing equal and efficacious remedy under any special enactment and a partial restraint imposing a condition to be complied with before institution of the suit. A partial restraint imposing a condition to be complied with before institution of a suit is normally intended to avoid unwarranted litigation and to provide an opportunity to the proposed defendant to address the grievance of the proposed plaintiff and is resting on a



different pedestal apart from the complete restraint/bar with equal and efficacious remedy. In short, for a complete bar, equal and efficacious remedy should be provided. Likewise, even in the case of partial bar, there should be provision to address the grievance of proposed petitioner by way of any urgent or immediate relief. Normally, partial restraint is to give an opportunity to the proposed defendant/respondent to redress the grievance without institution of a particular suit. Instances can be noticed under Section 80 C.P.C., Section 55 of the Act etc. But, in Section 80 C.P.C., the legislature has provided provision for meeting any urgent and immediate relief required, for which he has to obtain the leave of court, so as to overcome the partial restraint incorporated as a condition precedent for institution of a suit. The broad principle behind it is that no one can be left out without



legal remedy. Postponement or adjournment of a legal remedy under any statute is not permissible if it offends the valuable right of a litigation, unless it provides an alternative measure to redress any grievance by way of immediate or urgent relief. In other words, the provision should strike a balance by providing an alternative remedy to meet urgent and immediate relief without which there cannot be any partial restraint under the guise of any condition precedent to be complied with for the institution of the suit. The abovesaid principle in its letter and spirit is followed in the construction of Section 80 C.P.C. with its subsection (2). But no such treatment was given under Section 55 of the Act to address the remedy, if any, legally entitled to by way of any urgent or immediate relief. Section 55 of the Act by its construction does not address the vital requirement for providing remedy by way of



immediate or urgent relief, hence bad in law and it may offend even the very principle of equality enshrined under the Constitution. This might be the reason why the legislature has in its wisdom incorporated sub-section (2) to Section 80 C.P.C.. But no such treatment was given to Section 55 of the Act, hence bad in law. Hence, it is within the permissible limit of the court to do justice to the parties by exercising the inherent power under Section 151 C.P.C. and can grant leave to institute a suit overriding the effect of Section 55 of the Act, if it found necessary for protecting the interest of a litigant by way of any immediate or urgent relief.

4. It is based on the broad principle that there shall not be any prohibition in exhausting the remedy by way of civil suit. Hence, the prohibition in instituting the suit for a particular period mandating a notice in advance



must address the issue of urgent or immediate relief necessary to protect the interest of any party before the expiry of period of notice or prohibition thereof, otherwise, the provision would fall under the mischief of denying justice and it may be a violation of equality before law enshrined under the Constitution of India. The adjournment of a right of suit or right to redress the grievance for any period under the guise of a mandate to be complied with would offend equality before law, unless it contains sufficient provision to address any urgent and immediate relief during the period of prohibition. The object of a debarring provision for the period of advance notice is to give the authority an opportunity to consider the claim or the relief sought and it may be in the nature of a warning and to avoid unwarranted litigation and not for denying any right of institution or entitlement of any urgent or immediate remedy to



a person, if he is otherwise entitled to get it. Hence, a provision debarring institution of suit for a period with the mandate of an advance notice must address the right of party to obtain any immediate or urgent relief. Hence, Section 55 of the Act would fall under the mischief of bad in law.

5. Further, the bar under Section 55 of the Act shall not be understood as a complete bar. It would operate only to the matters which would come under the purview of the said Act, the special enactment. Section 55 says that no suit shall be instituted against the Board or the executive officer of the Sree Padmanabhaswamy Temple until the expiration of two months after a notice in writing has been delivered or left at the office of the Board, or of the executive officer, as the case may be, stating the cause of action, the relief sought, and the name and the place that such notice has been so delivered



or left. The bar in instituting the suit must be understood pertaining to the matters, which would come under the purview of that particular enactment viz., Travancore-Cochin Hindu Religious Institutions Act, 1950, unless the context otherwise says. It may not have any application pertaining to a suit enforcing an individual civil right other than the one dealt under the special enactment. Hence, the "cause of action" and "relief sought" incorporated under that provision stands for a matter which is dealt under the special enactment. It is really akin to that of the bar under Section 80 C.P.C., wherein notice is mandated only in respect of any act "purported to have been done by any public officer in his official capacity". The expression 'cause of action' and the 'relief sought' engrafted under Section 55 of the Act stands for 'cause of action' and the 'relief' arising out of any of the matter dealt under the



provisions of the Act or any act purported to have been done by the board or by the executive officer referred under the said Act and none else. Hence, a suit for enforcement of an individual civil right though against the board or the executive officer would not stand hit by the partial restraint under Section 55 of the Act.

6. The question of maintainability of the suit was taken up in a highly belated stage after 12 years of the institution of suit, that too, after the passing of a judgment by this Court in O.P.(C)No.694/2017 dated 09/11/2022. The question of maintainability should be agitated at the earliest moment of first instance and the proceedings shall not be dragged indefinitely under that guise. In the instant case, the bar under Section 55 of the Act will not come into play and hence, the impugned order is liable to be set aside by



2023:KER:79390

OP(C) NO. 2704 OF 2023

11

restoring the suit on the file of the trial court.

7. Hence, the impugned order will stand set aside along with Exts.P16 and P17 orders (the subsequent orders) and the matter will stand remanded back to the trial court. The parties shall appear before the court below on 20/12/2023.

The O.P.(C) will stand allowed accordingly.

Sd/-

P.SOMARAJAN
JUDGE

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APPENDIX OF OP(C) 2704/2023

PETITIONERS'S EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE PLAINT IN OS NO.191/2010, DATED 12.07.2010 ON THE FILE OF THE MUNSIF COURT, CHENGANNUR,
- Exhibit P2 THE TRUE COPY OF THE APPLICATION FOR TEMPORARY INJUNCTION, IA NO. 1012/2010, ON THE FILE OF THE MUNSIF COURT, CHENGANNUR.
- Exhibit P3 THE TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE RESPONDENTS TO EXT.P2 APPLICATION.
- Exhibit P4 THE TRUE COPY OF THE COMMISSION REPORT DATED 13.07.2010 FILED IN THE EXT.P1 SUIT,
- Exhibit P5 THE TRUE COPY OF THE APPLICATION DATED 8.11.2016 FILED UNDER THE RIGHT TO INFORMATION ACT BY ONE SREELAL K.N. TO THE ASSISTANT ENGINEER PWD (ROADS SECTION)
- Exhibit P6 THE TRUE COPY OF THE REPLY DATED 6.12.2016 FROM THE PUBLIC INFORMATION OFFICER
- Exhibit P7 THE TRUE COPY OF THE RELEVANT PAGE OF THE REGISTER OF ROADS, ATTESTED ON 09.12.2016, BY THE ASSISTANT ENGINEER SHOWING THE DETAILS OF THE ROADS, ISSUED FROM THE OFFICE OF THE ASSISTANT ENGINEER, PWD ROAD, CHENGANNUR,



- Exhibit P8 THE TRUE COPY OF THE CERTIFICATE DATED 27.09.2010 ISSUED BY THE VILLAGE OFFICER, CHENGANNUR EVIDENCING THE FACT OF THE TRANSFER OF THE ROAD TO PWD
- Exhibit P9 THE TRUE COPY OF THE ORDER DATED 7.12.2010 OF THE COURT OF MUNSIFF , CHENGANNUR, IN IA NO. 1012 OF 2010 IN EXT.P1 SUIT
- Exhibit P10 THE TRUE COPY OF THE JUDGMENT DATED 21.12.2016 IN CMA NO.1/2011, OF THE SUB COURT, MAVELIKKARA,
- Exhibit P11 THE TRUE COPY OF THE JUDGMENT DATED 9.11.2022 IN O.P. (C) NO. 694 OF 2017,
- Exhibit P12 THE TRUE COPY OF THE IA NO. 2/2023 IN OS NO. 191/2010 ON THE FILE OF THE COURT OF MUNSIFF, CHENGANNUR,
- Exhibit P13 THE TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONERS HEREIN, RESPONDENTS IN EXT.P12,
- Exhibit P14 THE TRUE COPY OF THE ORDER DATED 15.11.2023 IN IA NO. 2/2023 IN OS NO. 191/2010 ON THE FILE OF THE COURT OF MUNSIFF, CHENGANNUR
- Exhibit P15 TRUE COPY OF THE COMMON JUDGMENT IN W.P.(C) NO. 23404/2017 AND W.P.(C) NO. 27148/2017, DATED 6.1.2023
- Exhibit P16 THE TRUE COPY OF THE JUDGMENT DATED 15.11.2021, IN O.S.NO.191/2010 ON THE FILE OF MUNSIFF COURT, CHENGANNUR,
- Exhibit P17 THE TRUE COPY OF THE DECREE DATED 15.11.2021, IN O.S.NO.191/2010 ON THE FILE OF MUNSIFF COURT, CHENGANNUR,
- Exhibit P18 TRUE COPY OF THE B DIARY ISSUED BY THE



2023:KER:79390

OP(C) NO. 2704 OF 2023

14

COURT BELOW PERTAINING TO THE
PROCEEDING IN O.S.NO.191/2010 ON THE
FILE OF MUNSIFF COURT, CHENGANNUR

/TRUE COPY/

PS TO JUDGE