

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4879 OF 2010
(Arising out of SLP(C) No.16844/2010)

TRIVANDRUM GOLF CLUB

Appellant (s)

VERSUS

STATE OF KERALA & ORS.

Respondent(s)

O R D E R

Mr. Shyam Diwan, learned Senior Counsel appears for petitioner and Mr. Jayadeep Gupta, learned Senior Counsel appears for respondents/caveators - State of Kerala.

2. Heard. Leave granted.

3. We have heard learned counsel for parties at length in instalments, on a number of days. Perused the records. Additional affidavit and counter affidavit have been filed during the course of hearing. Certain documents have also been filed by the appellant, which are taken on record.

4. Appellant feeling aggrieved and dissatisfied with the order dated 17.5.2010 passed by Division Bench of High Court of Kerala at Ernakulam in FAO No.63 of 2010 has preferred this appeal, which arose out of an order passed by Trial

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Court rejecting the appellant's prayer for grant of temporary injunction. Appellant has filed a suit for declaration challenging the order of respondent No.1 cancelling the Licencees' Agreement, entered between appellant and respondent No.1, on the ground that such a cancellation is violative of the terms of the Agreement as also principles of natural justice, hence it is null and void.

5. The appellant admittedly is running a Golf Course in an area measuring about 25.38 acres, in the heart of Thiruvananthapuram city. Initially it was given to appellant on a lease for a period of 99 years, at the rate of Rs.40/- per mensem. With the passage of time, the licence fee has since been enhanced by the respondent No.1 State at Rs.25,000/- per annum. According to State, a policy decision has been taken by it to run the Golf Course itself through Sports Council so as to encourage young boys and girls within the State of Kerala to impart them training in Golf. With that intention it is stated that licence of the appellant has since been cancelled.

6. The appellant has been fighting it tooth and nail to retain the possession of the golf course. On several earlier occasions, when the licence was sought to be cancelled, it had approached the court unsuccessfully.

7. Now it has filed a suit pending before the Second Additional Sub Judge, Thiruvananthapuram registered as O.S.No.60 of 2010, claiming the aforesaid reliefs. Alongwith the suit the appellant had also filed an application for grant of temporary injunction under Order 39 Rules 1 & 2 of the C.P.C. The said application was opposed by the respondents. On adjudication of the said application, the Trial Court found that since appellant is only a licensee, therefore, it shall have no right to pray that the period of licence should be continued. Thus the interim injunction sought for, by the appellant, was denied.

8. Against that order passed by the Trial Court, appellant herein preferred an appeal before the Division Bench of the High Court. The Division Bench also came to the conclusion

that appellant has not been able to make out the three pre-requisite grounds for grant of injunction and the appeal was liable to be dismissed, which it did. It is against this order, the appellant is before us challenging the same on variety of grounds.

9. After having heard the learned counsel for the appellant at length and after perusal of the record, we are of the

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considered opinion that no interference is called for with the impugned order passed by the Division Bench. Still we feel that equities are required to be worked out between the parties, at least till the pendency of the suit.

10. However, the interest of 600 members of Trivandrum Golf Course is also required to be safeguarded.

Various

proposals were given by the appellant but the same were not acceptable to the respondents. With an intention to safeguard the interest of both parties and also keeping in mind that the existing membership may not be disturbed who have paid huge amounts to secure membership and Golf Course is maintained as is being presently maintained, we deem it fit and proper to appoint a Committee consisting of the following persons:

1) The Chief Secretary to the Government of Kerala would be the Chairman of the said committee. Alongwith him the following shall be the members:

- (I) Secretary to Government, GAD,
- (II) President of the Kerala Sports Council,
- (III) District collector of Thiruvananthpuram,
- (IV) Director of Tourism, Government of Kerala and
- (V) the Chief Engineer, PWD (Buildings and local works)

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11. Presently the said Golf Club is being managed by the

elected persons of Trivandrum Golf Club viz. President, Honorary Secretary, Treasurer and one of the committee members plus its Captain. Therefore, it is necessary to

induct some of the appellants nominees as well. Out of the

aforesaid elected persons, we deem it fit and proper to include the President, Honorary Secretary, Captain and one committee member of Trivandrum Golf Club in the aforesaid Committee. This committee as constituted as above, would be overall incharge of the Golf Course and take care of day to day management as also maintenance of the Golf Course and buildings, equipments and implements etc..

12. It is made clear that respondents shall not disturb the membership of those, who are already members of the said Golf Club, approximately 600. The existing staff already employed by Trivandrum Golf Club would continue, which finds place at page 6 of volume-A filed by appellant. Thus the existing staff and employees of the Club would continue to maintain the Golf Course and buildings etc. as before.

13. The Trial Court would endeavour to dispose of the suit at an early date, preferably within a period of three months, from the date of filing of the written statements by the respondents. Respondents to file their written statement
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positively within a period of 15 days hereof, after serving copy thereof on the appellant.

14. The Trial Court would consider and dispose of the suit without being influenced by any of the observations made either in the impugned order or any of the earlier orders passed either in IAs or in the appellant's petition disposed of by the High Court, meaning thereby the same would be considered and disposed of on merits, in accordance with law.

M/S. K.J. John & Co.,Adv.

For Respondent(s)

Mr. Jayadeep Gupta,Sr.Adv.
Mr. G. Prakash,Adv.

following

UPON hearing counsel the Court made the

O R D E R

Heard. Leave granted.

The appeal stands disposed of in terms of the
signed order.

(O.P. Sharma)

Court Master

(Signed order is placed on the file)

(M.S. Negi)

Court Master