IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

RP.No. 906 of 2014 () IN DBP.123/2014

AGAINST THE ORDER/JUDGMENT IN DBP 123/2014 of HIGH COURT OF KERALA DATED 27-10-2014

REVIEW PETITIONER(S)/1ST RESPONDENT:
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TRAVANCORE DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY, NANTHANCODE
THIRUVANANTHAPURAM-695 003.

BY ADV. SRI.M.V.S.NAMBOOTHIRI, SC, TRAVANCORE DEVASWOM BOARD

RESPONDENT(S):
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1. **NETTORKKOTTU TEMPLE ADVISORY COMMITTEE**
   THRIKKARIYOOR GROUP
   MOOVATTUPUZHA- REPRESENTED BY ITS PRESIDENT
   SRI.K.S.JAYAKRISHNAN NAIR.

2. **THE MUVATTUPUZHA MUNCIPALITY**
   REPRESENTED BY ITS SECRETARY, MUVATTUPUZHA P.O.
   ERNAKULAM-686 661.

3. **THE CONTRACTOR**
   M.C.ELDHO, MOLEKUDIYIL HOUSE, NELLAD P.O.
   MUDAVUR VIA, MUVATTUPUZHA-686 669.

R BY SR. GOVERNMENT PLEADER SRI.A.RANJITH

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 10-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

RP.No. 906 of 2014

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A-1: COPY OF T.D.B. REPORT NO.90/2008 DATED 3.12.2008 SUBMITTED BY THE LEARNED OMBUDSMAN.

ANNEXURE A-2: COPY OF THE JUDGMENT DATED 4.12.2008 IN DBA 105/2008 OF THIS HON'BLE COURT.

ANNEXURE A-3: COPY OF THE JUDGMENT DATED 28.9.2010 IN DBA 21/2010 OF THIS HON'BLE COURT.

ANNEXURE A-4: COPY OF THE ORDER DATED 21.10.2013 IN DBA 2/2010 OF THIS HON'BLE COURT.

ANNEXURE A-5: COPY OF THE AUDIT REPORT OF THE MASTER PLAN IMPLEMENTATION COMMITTEE.

RESPONDENTS ANNEXURES: NIL

/TRUE COPY/

P.A. TO JUDGE

VPV

P.N.RAVINDRAN & P.B.SURESH KUMAR, JJ.
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R.P.No.906 of 2014
in
D.B.P.No.123 of 2014
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Dated this the 10th day of February, 2015

ORDER

P.N.Ravindran, J.

The prayer in this review petition is to review and recall the interim order passed by us on 27.10.2014 in D.B.P.No.123 of 2014. By that order, we appointed Sri.A.S.P.Kurup, learned counsel of this Court as Advocate Commissioner to inspect an auditorium building, the construction of which has not yet been completed, along with an expert Engineer for the purpose of ascertaining whether the estimates prepared for the work were in order, whether the work has been carried out in accordance with the specifications stipulated by the Travancore Devaswom Board and also for preparing a fair estimate of the expenditure likely to be incurred to complete the construction and to put the auditorium to profitable use. We also directed the Secretary, Travancore Devaswom Board to produce the relevant files for scrutiny by the Advocate Commissioner before the Honourable Ombudsman appointed by this Court within two weeks.

The Advocate Commissioner was directed to submit a report in this Court within four weeks. There was also a direction regarding payment of his remuneration.

2. The main ground raised in the review petition is that hitherto, in none of the major works undertaken by the Travancore Devaswom Board, the practice of reassessing the expenditure incurred has not been resorted to and if such a course is adopted, there will not be any finality in the matter. Yet another contention raised is that the Travancore Devaswom Board has no confidence in Sri.A.S.P.Kurup and they apprehend he will not be impartial. As regards the first of the contentions, the reasons which weighed with us in passing the order sought to be reviewed are elaborately set out in the very order. While passing the order sought to be reviewed, we had taken note of the fact that construction of an auditorium which commenced in the year 2008 has not yet been completed though more than Rs.3 crores has been spent and even going by the estimate now prepared, a further sum of Rs.2.6 crores is required to complete the work. We had also taken note of the fact that one is not certain as to whether by spending a further sum of Rs.2.60 crores the construction can be completed or whether anyone will come forward to complete the work at the estimated cost or whether

as in the case of the very same auditorium, the work will be tendered at a higher rate. We had also taken note of the fact that the work was undertaken at the instance of the Muvattupuzha Municipality which resolved on 16.6.2008 to request the Travancore Devaswom Board to construct a shopping complex and an auditorium in the lands belonging to Nettoorkottukavu Devaswom and the further fact that within 52 days thereafter namely on 7.8.2008, the Board responded by deciding to construct the ground floor of the auditorium at an estimated cost of Rs.68 lakhs. The work was however tendered at 45% above the sanctioned estimate notwithstanding the fact that the permission granted by this Court in D.B.A.No.105 of 2008 by order passed on 4.12.2008 was on the premise that the estimated cost of construction is Rs.63 lakhs. Still later, sanction was sought for construction of the upstairs portion at an estimated cost of Rs.96,90,000/- and at that stage also, the work was awarded to the very same contractor at 58% above the estimated cost. The fact remains that though more than Rs.3 crores has been spent, the construction has not been completed and going by the estimate now prepared, a further sum of Rs.2.60 crores will be required to complete the construction. In such circumstances, the Board cannot in our opinion legitimately take exception to the endeavour of this Court to ascertain whether the estimates prepared were in order, whether the work has been carried out in accordance with the specifications stipulated by the Board and also for preparing a fair estimate of the expenditure likely to be incurred for completing the construction. If everything is in order and the Board or its officials have nothing to hide, we find no reason why the Board should stand in the way of such an exercise being undertaken. We therefore find no merit in the contention that the exercise now undertaken by this Court is an exercise which has not been hitherto undertaken and therefore, the impugned order should be reviewed and recalled.

3. As regards the choice of the Advocate Commissioner also, we find no merit or force in the contention raised by the review petitioner. The observations relied on to seek the appointment of another person as Advocate Commissioner in the place of Sri.A.S.P. Kurup, are the observations made by the Senior Deputy Director of Local Fund Audit. There is nothing in those observations against Sri.A.S.P.Kurup in person. The observations are against the Ettumanoor Master Plan Implementation Committee. The correctness of the said report is pending consideration before this Court in D.B.A.R.No.15 of 2013, which is yet to be disposed of. The Board

cannot therefore in our opinion rely on the observations made by the auditor in the audit report which is pending consideration of this Court to contend that Sri.A.S.P.Kurup should not be appointed as the Advocate Commissioner. The Board has also placed reliance on Annexure A4 order passed by a Division Bench of this Court on 21.10.2013 in D.B.A.No.2 of 2010 to contend that in the matter of construction of the Asthanamandapam and Nadapanthal this Court did not permit the Master Plan Implementation Committee to be associated with this construction. The said order indicates that it was for the reason that the sponsors were directly carrying out the work that this Court permitted the Board to get the work executed through sponsors without the junction of the committee. There is no finding in the said order that it would not be in the interests of the Board to permit the Master Plan Implementation Committee to be associated with the work. We therefore find no reason to accept the said contention as well.

4. We also deem it appropriate in this context to mention that Sri.A.S.P.Kurup, learned Advocate of this Court has been appointed by this Court as Commissioner on many a occasion to oversee various works in temples including the temples under the administrative control of the Travancore Devaswom Board and the

Cochin Devaswom Board. Till date, this Court has had no occasion to frown upon the conduct of Sri.A.S.P.Kurup in the discharge of his duties as Advocate Commissioner. Sri.A.S.P.Kurup is well known for expressing his views candidly and openly. He is also well known for his integrity and devotion to duty. If as stated earlier, the Board or its officers have nothing to hide, there is no reason why it should take exception to the appointment of Sri.A.S.P.Kurup as Advocate Commissioner. The Board appears to be under the impression that if Sri.A.S.P.Kurup is the Advocate Commissioner, the irregularities if any in the very preparation of the estimate, the award of the work and the construction are likely to be brought to light. We accordingly overrule the said contention as well.

For the reasons stated above, we hold that there is no merit in the instant review petition. The review petition fails and it is dismissed. No costs.

Sd/-

P.N.RAVINDRAN
JUDGE

Sd/-
P.B.SURESH KUMAR
JUDGE

vpv