

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2016

CORAM:

THE HONOURABLE MR. JUSTICE C.T. SELVAM

C.R.P.(PD)No.1587 of 2016

and

C.M.P.No. 8616 of 2016

The Pastor/Chairman
ALC Kind Jesus Church
Block 28, Neyveli -7.

... Petitioner/Respondent/3rd Defendant

Vs.

Aron Arulsami

... Respondent/Petitioner/Plaintiff

Civil Revision Petition filed under Article 227 of Constitution of India, against the petition and order passed in I.A.No.422 of 2016 in O.S.No.42 of 2016 before the Sub Court, Neyveli, dated 28.04.2016 and to set aside the same.

For Petitioner	:	Mrs. Hema Sampath for M/s.S.Gunalan
For Respondent	:	Mr.A.Immanuel

ORDER

This revision challenges the order passed in I.A.No.422 of 2016 in O.S.No.42 of 2016 on the file of Sub Court, Neyveli and seeks exercise of powers of this Court under Article 227 of the Constitution of India.

2. Respondent preferred suit in O.S.No.42 of 2016 on the file of the Sub Court, Neyveli, against the petitioners herein seeking a declaration that the publication dated 21.04.2016 made by third defendant of the elected members of the pastoral committee is invalid and that the persons named be directed not to perform religious functions. The respondent moved I.A.No.422 of 2016 to forbear persons 'informed' as elected in the list of the petitioner/respondent dated 21.04.2016. Such application has been allowed *ex parte* on 28.04.2016. Aggrieved, revision petitioner is before this Court.

3. Heard learned senior counsel for petitioner and learned counsel for respondent.

4. The dispute in the present case is regarding elections to the Pastorate Committee of Arcot Lutheran Church.

5. Taking this Court through the Bye-laws and Constitution of the Arcot Lutheran Church and Memorandum of Association, learned Senior Counsel for petitioner submitted that the respondent/plaintiff was ineligible to vote at the election for office bearers for the years 2016-2019 and the suit has been preferred informing as elected the office bearers on 21.04.2016. Referring to the communication of the Secretary of the Church, dated 14.03.2016, learned Senior Counsel pointed out that the very Pastorate Committee Elections were to be

conducted only on 30.04.2016. Learned Senior counsel contended that though Or.39 R.3A of CPC provided for disposal of an application, where an order of injunction had been granted without notice to the opposite party within a period of 30 days from the date of order, the same would not preclude exercise of powers under Article 227 of Constitution of India by this Court, particularly in the facts of the present case. Learned Senior Counsel relied on the decision of the Hon'ble Apex Court in ***Sura Dev Rai Vs. Ram Chander Rai and Others [(2003) 6 SCC 675]***, particularly, paragraph Nos.38 and 39 thereof, which are reproduced hereunder:-

“38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:-

(1) Amendment by Act 46 of 1999 with effect from 1.7.2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the Courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists

none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident ie., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the

supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the tendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set

aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersessions or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

39. *Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less that often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where “a stitch in time would save nine”. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of*

judicial conscience enriched by judicial experience and practical wisdom of the judge.”

6. Learned senior counsel submitted that in passing the order under challenge, the Court below has acted to the detriment of persons not before it and persons whom the respondent has wrongfully alleged as having been elected have not been made parties to the suit.

7. Learned counsel for respondent submitted that the administration of the Church was in the hands of Pastoral Committee as per Bye-laws and Constitution, and when the number of members of the Church is 100 or more, the Pastoral committee shall consist of eight members and when below 100 it shall consist of six members. He referred to earlier decision of the Court below passed in I.A.No. 93 of 2013 in O.S.No. 32 of 2013, wherein in considering and allowing an application moved under Section 94(C), 151 read with Order 39 Rule 1 and 2 of CPC, to restrain the respondents from conducting elections on the basis of the voters list, dated 31.03.2013, the Court below has found as follows:-

“15. ... Originally, a suit has been filed before the District Munsif, Cuddalore challenging the election for the year 2012-2013. Under such circumstances, when the matter is seized before the Court, the respondent acted suo muto and included 16 persons according to their whims and fancies. It is not the case of the respondent that they have added the members after obtaining orders from the court below. Therefore, without any basis the respondents have included

16 persons in the final voters list in the year 2013-2016 which is in violation of natural justice.

16. No doubt, the respondents have also filed the subscription receipts regarding collection of member fee as per section 33(a) of the Standing Rules none of the new added voter has paid the subscription for a period of three years continuously. It is a gross violation of Section 33(a) of Standing Rules.....

17. If the election is allowed to be proceeded the petitioners will be put in to very serious hardship. Considering the facts and circumstances and keeping the basic principle to be adopted before granting the relief of ad-interim injunction this Court has granted the relief of interim injunction in favour of the petitioners, as against the same the respondents had prepared the CRP and the same has been dismissed with an observation to dispose this I.A. at the earliest.”

8. Learned counsel contended that the Pastor/Chairman of ALC King Jesus Church/petitioner in the present revision has been examined in O.S.No.32 of 2013 before the Court below on 15.04.2016 and 21.04.2016. He had admitted that there was no proof of payment of subscription by 18 newly added members. Learned counsel also referred to the communication of previous Pastor of ALC King Jesus Church, dated 13.03.2015, which inter alia informed that the list of members of the years 2013-2014 and 2014-2015 could not be prepared. Learned counsel, therefore, submitted that final voters' list put up by the petitioners towards

Pastorate Committee Elections for 2016-2019 was false. He referred to admissions of the first petitioner to the effect that no receipts had been issued in respect of a sum of Rs.12,000/- received from an individual and that the members of the pastoral committee are to be selected as per rules. It is not open to the third defendant to select members in contravention thereof and his intend to do so is indicative in the publication dated 21.04.2016. It is, therefore, that the plaintiffs had filed the suit towards restraining such persons from taking part in the affairs of the Church.

9. Learned counsel relied on decision of the Hon'ble Apex Court in ***Most Rev. P.M.A. Metropolitan and Others Vs. Moran Mar Marthoma and Another [1995 Supp (4) SCC 286]***, particularly paragraphs 43 and 45, which are reproduced as under:

“42. ... Admittedly no law in respect of Christian Churches has been framed, therefore, there is no statutory law. Consequently, any dispute in respect of religious office in respect of Christians is also cognizable by the Civil Court. The submission that the Christians stand on a different footing than Hindus and Buddhists, need not be discussed or elaborated. Suffice it to say that religion of Christians, Hindus, Muslims, Sikhs, Buddhists, Jains or Parsees may be different but they are all citizens of one country which provides one and only one forum that is the Civil Court for adjudication of their rights, civil or of civil nature.

45. ... The law has been explained in paras 315, 332

and 337 of Halsbury's Laws of England, Vol. 14. A church is formed by the voluntary association of individuals. And the churches in the common wealth are voluntary body organised on a consensual basis - their rights apart from statutes will be protected by the courts and their discipline enforced exactly as in the case of any other voluntary body whose existence is legally recognised. Therefore, all religious bodies are regarded by courts of law in the same position in respect of the protection of their rights and the sanction given to their respective organisations. It is further settled that discipline of a church cannot affect any person except by express sanction of the civil power or by the voluntary submission of the particular person. But for purposes of enforcing discipline within a church religious body may constitute a tribunal to determine whether its rules have been violated by any other members or not and what will be the consequence of that violation. In such case the tribunals so constituted are not in any sense courts, they derive no authority from the statutes and they have no power of their own to enforce their sentence. Their decisions are given effect to by the courts as decision of the arbitrators whose jurisdiction rests entirely on the agreement of the parties. Consequently, if any member of such body has been injured as to his rights in any matter of mixed spiritual and temporal character the courts of law will, on due complaint being made, inquire into the laws and rules of the tribunal or authority which has inflicted the injury and will ascertain whether any sentence pronounced was regularly pronounced by competent authority, and will give such redress as justice demands."

10. Learned counsel submitted that the respondent had challenged the wrongful action of the petitioners and the Court below would be an arbitrator of the dispute.

11. Learned counsel contended that in so far as non-joinder of parties is concerned, the remedy lies under Or.1 R.10 of CPC. If the petitioner contends that the suit is not maintainable, they would have seek exercise of powers under Or.7 R.11 of CPC. In the face of express provisions dealing with such matters, this Court would not exercise powers under Article 227 of the Constitution of India. Where a Court has passed an *ex parte* order of injunction in due exercise of discretion and jurisdiction, the remedy for the petitioner would only be under Or.39 R.3-A CPC.

12. Learned counsel submitted that petitioner had informed six persons as eligible to contest for appointment as Pastoral committee members. The membership of the ALC King Jesus Church was below 100 and as such, their election was a *fait accompli*. Therefore, the prayer in I.A.No.422 of 2016 in O.S.No.42 of 2016 on the file of Sub Court, Neyveli, dated 28.04.2016 is in order.

13. By way of reply, learned senior counsel submitted that the letter of the previous Pastor of ALC King Jesus Church, dated 13.03.2015 which informed of

inability to prepare the election list for the year 2013-2014 and 2014-2015 and as also the deposition of the revision petitioner in O.S.No. 32 of 2013, were not before the Court below, when it passed the order under challenge.

14. This Court has considered the rival submissions.

15. The submission regards total number of members of the Church being below 100, that the Pastorate committee would comprise of six members and that as only six members stood shown in the list prepared by the petitioner as eligible to contest their election was a *fait accompli* is not one found in the plaint. This Court is unable to countenance the contention of Pastoral Committee members having been elected even before the actual election. Further, the Court below has passed orders detrimental to interests of persons not before it. This Court is of the view that the Court below has exercised jurisdiction in a manner not permitted by law resulting in grave injustice to parties not before it.

For the aforesaid reasons, this revision shall stand allowed and the order in I.A.No.422 of 2016 in O.S.No.42 of 2016 on the file of Sub Court, Neyveli, dated 28.04.2016 shall stand set aside. I.A.No.422 of 2016 in O.S.No.42 of 2016 shall stand struck off the file of the Court below. It would be open to the respondent to seek withdrawal of suit with liberty to move afresh, if such a course is considered appropriate. Any application so moved will be considered by the Court below solely

on merits. No costs. Connected Miscellaneous Petition is closed.

15.06.2016

Note to office:

Issue order copy by 19.07.2016

Index: Yes/No

Internet: Yes

vsg/gm

To

The Sub Court,

Neyveli.

C.T. SELVAM, J

vsg/gm

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