

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.3.2016

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.5827 of 2016

W.M.P.NOS.5171 TO 5173 & 6072 OF 2016

Ceylon and India General Mission,
a Company rep. by its General Secretary,
Rev.M.Benjamin Timothy ... Petitioner

Vs.

1. The District Collector,
Erode District, Erode-638 011.

2. The Tahsildar,
Anthiyur taluk,
Erode District.

3. Sakaria

4. Danaraj

5. Nova @ Krishnakumar

6. Charles Perinbam

7. Jayapaul

8. Dayalan

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified mandamus, to call for the records relating to the impugned order dated 27.1.2016 made in Na.Ka.No.11666/2015/A4 passed by the 2nd respondent, quash the same and consequently, forbear the respondents from interfering with the religious affairs and management of the CIG Mission N.S.Memorial Church at Anthiyur, Erode District.

For Petitioner : Mr.N.Manokaran

For Respondents: : Mr.P.Sanjay Gandhi, AGP
for R1 and R2
Mr.P.Immanuel Prakasam
for R3 to R8

ORDER

The petitioner has filed the present writ petition, praying for the issuance of a writ of Certiorarified mandamus, to call for the records relating to the impugned order dated 27.1.2016 made in Na.Ka.No.11666/2015/A4 passed by the 2nd respondent, quash the same and consequently, forbear the respondents from interfering with the religious affairs and management of the CIG Mission N.S.Memorial Church at Anthiyur, Erode District.

2. The petitioner is an organization, called Ceylon and India General Mission (in short, CIG Mission), was formed in the year 1893 with an aim to Evangelizem and to form extending churches. It is a voluntary union of members of many evangelical churches, adopting the fundamentals of the Christian faith as set forth in the Doctrinal basis of the bye-laws. After the introduction of the Companies Act, 1956, the petitioner CIG Mission was incorporated as a company under the provisions of the Companies Act. Its registered office is situated at No.11, Pottery road, Frazer Town, Bangalore-560 005. The petitioner Mission has established nearly 134 churches in India as well as in Srilanka and also administering schools, hospitals, hostels and conducting Bible classes. The Chairman of the CIG Mission is the Head of the AGM, which administers the affairs and management of all the above mentioned churches. Each one of the Churches will have 7 members who are called as Deacon Board Members. One such Church called 'N.S.Memorial Church' was established by the CIG Mission at Anthiyur, in which, the respondents 3 to 8 were inducted as members. The Chairman of the CIG Mission has appointed one Mr.Vasanthakumar as the Pastor who also acts as the President of the Deacon Board. The respondents 3, 5 and 6 have started giving unwarranted interference in the day to day administration of Deacon Board under the guise of projecting their individual interest. The 3rd and 8th respondents have formed two separate rival groups to take over the administration of Deacon Board and the properties of the N.S.Memorial Church, Anthiyur. At one stage, the members of the CIG Mission N.S.Memorial Church, started agitating against the respondents 3, 5 and 6. Therefore, they were removed from the basic membership of the CIG Mission on 01.10.2013. After their removal, the respondents 3 to 8 have no right much less any legal right to interfere in the day to day administration of the church. The respondents 3 to 6 and the respondents 7 and 8 have split up into two groups to fight for the management of the CIG Mission, N.S.Memorial Church and they had entered into some kind of secret understanding with a view to take over the affairs and administration of the Church. Thereafter, they approached the 2nd respondent to legalize their misdeeds and they formed into two groups and played a well drafted drama to justify their conduct by giving a complaint to the Sub Inspector of Police, Anthiyur Police Station, who in

turn referred the matter to the second respondent for further action. As per the prearranged plan, the second respondent had convened a meeting on 20.2.2015 by arraying the respondents 3 to 6 as 'A' party and the respondents 7 and 8 as 'B' party. The respondents 3 to 8 had agreed to nominate two individual as the persons to administer the affairs and management of the Church till the matter is adjudicated by the court of law. The petitioner was not a party to the said secret arrangement and the CIG Mission was also not informed about the internal understanding entered into between the respondents 2 to 8 on 20.2.2015.

3. According to the petitioner, the respondents 3 to 8 were already removed from the basic membership of CIG Mission N.S.Memorial Church and therefore, they have no locus to represent the said Church in any capacity before any authority. While so, on 29.01.2016, respondents 3 and 8 came to the Church and produced a copy of the impugned order, dated 27.1.2016 passed by the second respondent as if some kind of settlement has been arrived at between the respondents 3 to 8 with regard to the affairs and administration of CIG Mission N.S.Memorial Church, Anthiyur. The respondents 3 to 8 have no right to administer the affairs and to manage the Church, however, they have entered into a collusion and conspiracy with a view to deprive the rights of the petitioner Mission in relation to the property, is per se illegal. Therefore, aggrieved over the impugned order, the petitioner has come forward with the present writ petition.

4. Mr.Manokaran, learned counsel appearing for the petitioner would submit that the respondents 3 to 8 have no right whatsoever to administer the affairs of the church since they were removed from basic membership as early as on 01.10.2013 and while so, among themselves got formed into two groups and staged a drama as if some settlement has been arrived between them and gave a complaint to the Sub Inspector of Police, Anthiyur Police Station, who in turn forwarded the same to the second respondent, who passed the impugned order, dated 27.1.2016 without even informing the petitioner. He would further submit that the second respondent has no authority to pass the impugned order with regard to the internal affairs and administration of the church. The learned counsel would contend that the second respondent as an Executive Magistrate has passed the impugned order by invoking Section 107 Cr.P.C. as if there was law and order problem and before passing the order under Section 107 Cr.P.C., the second respondent has failed to follow the procedure set forth in Section 111 Cr.P.C. which lays down that whenever information is placed regarding breach of peace or disturb the public tranquility, before the Executive Magistrate, who in turn, if comes to the conclusion that there is sufficient ground for proceeding, to issue a show cause notice to the

person as to why he should not be ordered to execute a bond. Therefore, the learned counsel would submit that the impugned order passed under Section 107 Cr.P.C. without being followed the procedure laid down under Section 111 Cr.P.C., cannot be sustained and hence, it is liable to be set aside. The learned counsel invited the attention of this Court to the impugned order, wherein, the respondents 3 to 6 were shown as 'A' party and respondents 7 and 8 were shown as 'B' party, who in fact, were colluded each other and invited the order from the second respondent as if they entered into a settlement before the peace committee meeting and the second respondent, without intimating the party who would be aggrieved by virtue of the order being passed by him and without considering the fact that the respondents 3 to 8 were not even the members of the Church, has passed the impugned order. Hence, the learned counsel sought for quashing the impugned order.

5. Per contra, by filing a counter affidavit, the learned Additional Government Advocate appearing for the second respondent, would submit that the Committee of CIG Church, lodged a complaint before the Inspector of Police, Anthiyur police station with regard to the dispute between two groups and since the dispute is between two groups, the Sub Inspector has sent a letter to the second respondent, requesting to conduct a peace committee meeting to maintain the law and order problem. Pursuant to the same, a peace committee meeting was conducted in Taluk Office pm 20.2.2015 by the second respondent in the presence of Inspector of Police, Anthiyur, Zonal Deputy Tahsildar, Revenue Inspector of Anthiyur Firka and Village Administrative Officer, Anthiyur and also the respondents herein. In the said meeting, the following resolution has been passed.

- i) Nobody should disturb the prayer in the Church
- ii) The decision will be taken for election for the selection of committee, General Body members through the court proceeding of District Court.
- iii) Tmt.Latha Anbuselvan(1), Tmt.Kowsalya (2) were appointed temporarily to look after the Accounts of the Church.
- iv. The present Pastor will be in power till the judgment of the court.

Thereafter, one Thiru P.Dhanraj and 3 others have made a complaint before the Tahsildar, Anthiyur, stating that the activities of the above said Tmt.Latha Anbuselvan and Tmt.Kowsalya were not in norms and requested to relieve them from incharge as initiated in the peace committee meeting held

on 20.2.2015. Pursuant to the said complaint, members of A' party viz., Sakaria, Thiru A.Charles Perinbam and the members of B' party viz., Rev.Benjamin Trimothy, Rev.Vasanthakumar and Johson were invited to attend the peace committee meeting to be held on 17.12.2015 and accordingly a peace committee meeting and a decision was taken. Likewise, as when disputes arose, peace committees were held and decisions were taken from time to time. While so, the third respondent, one K.Sakariya, Secretary, CIG Mission Church, made a petition dated 18.1.2016 complaining about the Pastor Thiru Vasantha Kumar and his indiscipline activities. Pursuant to the said complaint, a peace committee meeting was conducted on 27.1.2016 by the second respondent in the presence of the members of A' party viz., Sakaria, Dhanraj, Nova @ Krishnakumar and Charles Perinbam and the members of B' party viz., Thiru Jayapal and Dayalan and in the said meeting, following decision was taken.

"The accounts of the Church will be auditing by the General Auditor. For that and on agreement Thiru Dhanraj, Rajendran from A party and Thiru Victor Babu, Dayalan were appointed as General Auditor Committee. The crucial date of completion of the auditing accounts was fixed on 15.2.2016. The election could be held as per the byelaws of the church committee."

Based on the decision taken in the peace committee meeting, the second respondent has passed the order, dated 27.1.2016.

6. The learned Additional Government Pleader would submit that by virtue of Section 107 Cr.P.C., the second respondent as Executive Magistrate is empowered to maintain law and order in his jurisdiction and as such, he passed the impugned order by invoking Section 107 Cr.P.C. which is legally sustainable. He would submit that if at all the petitioner is aggrieved with the said order, he can prefer an appeal before the Divisional Magistrate and the writ petition is not maintainable. Hence, he sought for dismissal of the writ petition.

7. The learned counsel appearing for the respondents 3 to 8, by filing a detailed counter, would submit that the 3rd respondent being the Secretary of the N.S.Memorial Church, was conducting the annual general meeting regularly. Since there was a dispute among the members, they approached the second respondent to arrive at amicable settlement and requested to solve the problem. Pursuant to the same, the second respondent conducted a peace committee meeting on 27.1.2016, wherein, the members of A party, viz., respondents 3 to 6 and the members of B party, viz., respondents 7 and 8 have participated and decided the issues and consequently, the second respondent passed the impugned order by invoking Section 107 Cr.P.C. in order to

maintain law and order. He would submit that the Church is an independent one and CIG Mission has no role to administer the same and an independent committee is administering the church. The petitioner has no right to interfere with the administration of the church, however, by virtue of interim stay, he is interfering with the affairs of the church. Hence, the learned counsel sought for dismissal of the writ petition.

8. Heard the learned counsel on either side and the learned Additional Government Pleader appearing for the respondents 1 and 2 and perused the materials available on record.

9. It is not in dispute that there are disputes between the petitioner and the respondents 3 to 8. The only grievance of the petitioner is that before passing the impugned order, the second respondent has neither issued any notice to the petitioner nor sufficient opportunity was provided to him to participate in the peace committee meeting held on 27.1.2016. However, this contention of the petitioner was denied by the respondents. Apart from the contention that no sufficient opportunity was provided to the petitioner to participate in the peace committee meeting, it is yet another contention of the petitioner that the respondents 3 to 8 among themselves got formed into two groups, viz., A and B and staged a drama as if some settlement has been arrived between them and gave a complaint to the Sub Inspector of Police, Anthiyur Police Station, who in turn forwarded the same to the second respondent, who passed the impugned order, dated 27.1.2016 by invoking Section 107 Cr.P.C. even though the situation does not warrant the same.

10. While challenging the impugned order, though the learned counsel for the petitioner has raised several contentions and placed reliance, however, finally, he has urged that it would be suffice if this Court directs the matter to be remitted to the second respondent for fresh consideration after affording an opportunity to the petitioner. For this, the learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned counsel appearing for the respondents 3 to 8 have reported no objection.

11. In the light of the above, without advertng to the merits of the case, I am of the view that the matter can be remitted to the second respondent for fresh consideration. Accordingly, the impugned order, dated 27.1.2016 is set aside and the matter is remitted to the second respondent for fresh consideration. the second respondent is directed to conduct the enquiry by affording the opportunity of hearing both the petitioner as well as the members of A and B party (the respondents 3 to 8 and pass appropriate orders in accordance

with law, within a period of eight weeks from the date of receipt of a copy of this order.

The Writ Petition is disposed of on the above terms. No costs. Consequently, connected WMPs are closed.

suk

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The District Collector,
Erode District,
Erode-638 011.

2. The Tahsildar,
Anthiyur taluk,
Erode District.

+ 2 ccs to Mr.P.Immanuel Prakasam, Advocate Sr 19975

+ 1 cc to Mr.N.Manokaran, Advocate Sr 20024

KR/20/4/16

W.P.No.5827 OF 2016

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