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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD)No.14102 of 2017

B.Gilbert

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Nagercoil,
Kanyakumari District.

2.The Superintendent of Police,
Nagercoil,
Kanyakumari District.

3.The Inspector of Police,
Nesamani Nager Police Station,
Nagercoil, Kanyakumari District.

4.K.Antony Muthu

5.S.Jeyaraj

6.D.Rabi Rosario

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the Respondents 2 and 3 to provide police protection to the Petitioner's life and liberty and to protect the Petitioner from the dangerous pose by the Respondents 4 to 6.

For Petitioner : Mr.Veera Kathiravan
Senior Counsel
for Mr.V.Jeyaprakash

For Respondents : Mr.D.Muruganantham
1 to 3 Additional Government Pleader.

For Respondents : Mr.N.Dilip Kumar
4 to 6

O R D E R

<https://hcservices.ecourts.gov.in/hcservices> The above Writ Petition is filed for issuing a Writ of Mandamus directing the respondents 2 and 3 to provide police protection to the petitioner's life and liberty.



2.The petitioner claimed to be the elected President of a trust known as "Holy Family Church Trust". It is the case of the petitioner that the Holy Family Church of Carmel Nagar was constructed by the Village Committee comprising of local residents of Carmel Nagar, Raman Pudur area in Nagarcoil. The said Committee was later formed a trust known as "Holy Family Church Trust" which was registered in the year 2002. As per the bye-laws of the trust, it is submitted that the office bearers of the Executive Committee are to be elected from the General Body.

3.It is the case of the petitioners that the respondents 4 to 6 falsely claim as if this Court has installed them as office bearers and came to the premises with rowdy elements on 20.07.2017. It is further stated that they threatened the women employees and restrained them for the whole day. It is further stated that the respondents 4 to 8 broke open the office lock. Though the complaint was lodged before the third respondent namely the Inspector of Police, Nesamani Nagar Police Station, it is stated that the third respondent did not come forward to take any action.

4.It is admitted by the petitioner that one Mr.Stephen Selvaraj was the past President and that his tenure came to an end by 29.01.2017. It is stated that the General Body unanimously passed a resolution not to conduct election on 29.01.2017 and the previous President by name Stephen Selvaraj continued to manage the trust till April, 2017 when the office bearers resigned. Thereafter, it appears that there was some dispute between the said Stephen Selvaraj and others who formed other group under the head of Anthoni Muthu. The Revenue Divisional Officer appears to have conducted a peace committee meeting so as to ensure law and order. As there was serious dispute with regard to the administration of the trust between the two groups, the Executive Magistrate directed the Executive Members of the erstwhile committee to administer the trust till such time the parties approach the Civil Court and get an order from the Court.

5.The fourth respondent filed a Writ Petition in this Court in W.P.(MD)No.6375 of 2017 to quash the order of the Revenue Divisional Officer. This Court by order dated 28.06.2017 partly allowed the Writ Petition in the following lines:

"4. In the considered opinion of this Court, the order passed by the RDO does not suffer from any serious infirmity, except insofar as the averment extracted below, warranting interference by this Court. It is the duty of Police and Revenue authorities to maintain law and order and take every possible step to ensure that there is no breach of peace. It is common knowledge that, places of worship are turning out into hot-beds of



violence. Therefore, under such strained circumstances, the Police and the Revenue authorities are required to maintain peace to ensure that there is no bloodshed or violence. However, it is beyond the scope of Revenue authorities to say that until the election dispute is decided by the Civil Court, the erstwhile Office bearers should continue to administer the Trust. This means that the erstwhile Office bearers would get additional leverage to continue with the administration of the Trust by keeping the dispute with regard to the election pending indefinitely.

5. Therefore, this Court quashes the following portion of the order:

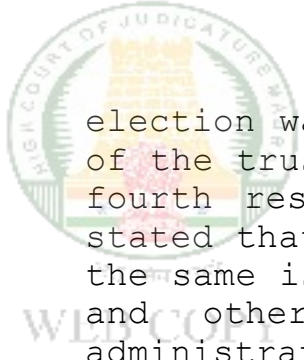
"...புதிதாக நடைபெற்ற தேர்தல் மற்றும் புதிய அமைப்பு தொடர்பாக நீதிமன்றம் இறுதி உத்தரவு பிறப்பிக்கப்படும் வரை பழைய கமிட்டி உறுப்பினர்களே மேற்படி மரஸ்டை நிர்வகிக்கலாம் / -

Rest of the portion is maintained. This Court directs the Police and the Revenue Authorities to ensure that there is no law and order problem created by any of the parties. If any law and order problem is created, the Police are directed to interpose under Section 149 Cr.P.C. and take stringent action against the parties. If violence escalates, it will not be beyond the scope of Revenue and Police authorities to enter into the premises and lock and seal the premises for safeguarding peace.

With the above observation and direction, this petition is partly allowed. No costs. Consequently, W.M.P.(MD) No.9049 of 2017 is dismissed and W.P.(MD) Nos.5021 and 8872 of 2017 are closed."

6.It is stated by the petitioner that pursuant to the order, the old committee conducted a General Body meeting on 09.07.2017 and constituted an ad-hoc committee and selected the petitioner as its President with a direction to conduct election in accordance with bye-laws. It is further stated by the petitioner that on 20.07.2017 the respondents 4 to 7 falsely claimed as if this Court installed them as officer bearers and came to the premises with rowdy elements and threatened the women employees and restrained them for the whole day. It is also stated that the petitioner gave a complaint to the second respondent on 22.07.2017. Thereafter, he sent another complaint to the third respondent on 24.07.2017. It is in the above factual background, the petitioner has now come before this Court by way of the above Writ Petition for police protection.

7.The respondents 4 to 6 have filed counter affidavit denying the allegations and contentions of the petitioner in toto. Since it is admitted that the period of office of the previous office bearers came to an end on 29.01.2017, it is stated that following the procedure contemplated as per the bye-laws, an



election was conducted for electing 27 Executive Committee members of the trust on 29.01.2017 by draw of lots. It is stated that the fourth respondent was elected as the President. It is further stated that the entire election process were videographed and that the same is available in the form of C.D. Since fourth respondent and other elected office bearers are in charge of the administration of the trust and its properties, the respondents 4 to 6 prayed for dismissal of the Writ Petition.

8. From the reading of the affidavit of the petitioner and the counter affidavit filed on behalf of the respondents 4 to 6, it is clear that there is a dispute with regard to the management of the trust and that two different groups are claiming right to administer the trust on the ground that they are the elected office bearers of the General Body of the Trust. Even as per the earlier direction of this Court, the parties are expected to approach the Civil Court for appropriate relief. The Writ Petition filed by the fourth respondent in W.P.(MD)No.6375 of 2017 does not deal with the rights of the parties or no issue regarding the claim of any one to the Writ Petition is decided. It is well settled that the disputed questions of title pertaining to the properties of the church concerned and right to one group or other with regard to the management of the Church, cannot be gone into by a Writ Court under Article 226 of the Constitution of India and under the garb of granting police protection, this Court cannot consider the rival contentions of the parties. The Hon'ble Supreme Court in the case of Moran M. Baselios Marthoma Mathews II and Others v. State of Kerala and others reported in (2007) 6 SCC 517 in paragraphs 5 to 8 held as follows:

"5. The High Court, however, went into the merit of the matter and opined that so far as the rights of Parish Churches are concerned, here was no declaration as against them, having not been impleaded in the proceedings before the Supreme Court. Having opined so, the High Court held:

"i. The rights of the Parish Churches were not determined by the Supreme Court in the 1995 decision. Thus, it cannot be said that the contesting respondents have no right to manage their properties or that the 1st petitioner has any right over the Churches which were not parties in the case;

ii. All the Churches listed in Exh. P-4 having not been impleaded as parties, no order affecting the rights of those who are not before the Court can be passed;

iii. The Churches had the right to form a separate Association. They were also entitled to leave the Malankara Association under Arts, 19,



25 and 26. It has not been shown that they had acted illegally in doing so;

iv. Police help cannot be ordered for he mere asking. It involves expense for the State. It is not a substitute for proceedings before an appropriate authority or court. It can be normally granted only when there is clear evidence of an existing danger to person or property. In matters involving religious institutions, it would be normally inappropriate to order the grant of police protection unless a clear case for allowing the entry of the police is made out;

v. Keeping in view the peculiar facts and circumstances as noticed above, no ground for the issue of a writ of mandamus as prayed for by the petitioner is made out."

6. Before we embark upon the rival contentions raised by the learned counsel appearing on behalf of the parties before us, we may notice that Appellant No. 1 is said to have resigned from the post of Catholicos of the Malankara Metropolitan in 2005. He died on 26.1.2006. An application for substitution has been filed by his successor who is Chief Catholico and Malanakra Metropolitan, which has been marked as I.A. No. 16 of 2006. The said substitution application is being opposed by the respondents herein contending that the question in regard to the validity or otherwise of the election of the Catholicos is pending consideration in a suit. Having regard to the fact that there exists dispute as to whether the appellicant herein is a validly elected person for holding the aforementioned post, and furthermore, in view of the fact that, in his absence, whether we can proceed with the appeals, we do not intend to pass any order in the substitution application.

7. The short question which arises for consideration, in our opinion, is as to whether in a situation of this nature, the High Court should have gone into the rival contentions of the parties. Our answer is 'No'. There cannot be any doubt whatsoever that prayer for issuance of a writ of mandamus may be granted against the State commanding it to perform its legal duties when it fails and/or neglects to do so. It is, however, another thing that while considering only that aspect of the matter, the Court in the garb of rendering a decision on that limited aspect would go into the disputed question of title and/or interpretation of a judgment of this Court wherefor other remedies are not only available but, as noticed hereinbefore, in fact, more than 200



suits, touching one aspect of the matter or the other, are pending in different Civil Courts.

8. A distinction, in our opinion, must be borne in mind in regard to the exercise of jurisdiction under Article 226 of the Constitution of India in relation to the matters providing for public law remedy vis--vis private law remedy. The High Court while exercising its jurisdiction under Article 226 of the Constitution, no doubt, exercises a plenary power but then certain limitations in regard thereto are well accepted. Ordinarily, a writ of or in the nature of mandamus would be issued against a 'State' within the meaning of Article 12 of the Constitution of India or the public authorities discharging public functions or a public utility concern or where the functions of the respondents are referable to a statute, which a fortiori would mean that save and except for good reasons Court would not entertain a matter involving private law remedy.

9. The question as regards grant of a relief for providing police protection in a somewhat similar case, came up for consideration before this Court in P. R. Murlidharan & Ors. v. Swami Dharamananda Theertha Padar & Ors., [2006] 4 SCC 501 wherein one of us was a party. It was held therein:

"Furthermore, the jurisdiction of the civil court is wide and plenary. In a case of this nature, a writ proceeding cannot be a substitute for a civil suit."

10. Balasubramanyan, J., in his concurring opinion observed:

"A writ petition under the guise of seeking a writ of mandamus directing the police authorities to give protection to a writ petitioner, cannot be made a forum for adjudicating on civil rights. It is one thing to approach the High Court, for issuance of such a writ on a plea that a particular party has not obeyed a decree or an order of injunction passed in favour of the writ petitioner, was deliberately flouting that decree or order and in spite of the petitioner applying for it, or that the police authorities are not giving him the needed protection in terms of the decree or order passed by a court with jurisdiction. But, it is quite another thing to seek a writ of mandamus directing protection in respect of property, status or



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right which remains to be adjudicated upon and when such an adjudication can only be got done in a properly instituted civil suit. It would be an abuse of process for a writ petitioner to approach the High Court under Article 226 of the Constitution seeking a writ of Mandamus directing the police authorities to protect his claimed possession of a property without first establishing his possession in an appropriate civil court. The temptation to grant relief in cases of this nature should be resisted by the High Court. The wide jurisdiction under Article 226 of the Constitution would remain effective and meaningful only when it is exercised prudently and in appropriate situations."

"12. Such might have been the contentions of the appellants before the High Court or before us in the special leave petitions, but we have no doubt in our mind that such disputed questions in regard to title of the properties or the right of one group against the other in respect of the management of such a large number of Churches could not have been the subject matter for determination by a Writ Court under Article 226 of the Constitution of India in the garb of grant of police protection to one or the other appellants."

"15. For the reasons stated hereinbefore, we are of the opinion that the High Court committed a manifest error in going into the disputed questions of title as also the disputed questions in regard to the rights of a particular group to manage the Churches, in exercise of its writ jurisdiction, particularly, when such questions are pending consideration before competent Civil Courts. We, therefore, are of the opinion that any observation made by the High Court should not influence the Courts concerned in arriving at their independent decisions and in respect thereof, all contentions of the parties shall remain upon."

9. Having regard to the nature of dispute in this case and the limited scope of the jurisdiction of this Court to deal with contentious issues, this Court has no other option but to dismiss this Writ Petition. However, liberty is preserved to the petitioner or any one of the parties to this Writ Petition to approach the Civil Court for appropriate relief. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



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Kanyakumari District.

2.The Superintendent of Police,
Nagercoil,
Kanyakumari District.

3.The Inspector of Police,
Nesamani Nager Police Station,
Nagercoil, Kanyakumari District.

+1CC to Mr.N.Dilip Kumar, Advocate, SR.No. 85725

+1CC to Mr.V.Jeyapragash, Advocate, SR.No. 85705

+1CC to the Special Government Pleader SR.No.85964

W.P. (MD) No.14102 of 2017

07.11.2017

srm

AM/SV MMS/SAR 1/19.12.2017/8P/7C