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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.06.2018

DELIVERED ON : 21.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.970 of 2018

and

CMP (MD) No.4271 of 2018

K.Manuel Selvanayagam

.. Petitioner/13th Defendant

vs.

1.P.Binekas Selvakumar Gnanaraj

2.V.John

3.E.Gabriel Jesudason

4.Tirunelveli Diocesan Trust Association,
rep. by its Secretary and Treasurer,
Tirunelveli Diocesan
having office at Punithavathiar street,
Palaymkottai,
Tirunelveli.

5.The Diocese of Tirunelveli,
rep. by its Bishop
having office at No.5, Punithavathiar street,
Palaymkottai, Tirunelveli.
The Bishop for himself and on behalf of the
Christian Community people belonging to CSI
Diocese under the representative capacity

6.Rt.Rev.J.J.Chiristdoss,
Bishop
having its office at Bishop Stowe,
16, North High Ground Road,
Palaymkottai.

7.P.P.Alwin Balan



9.C.Devadoss

10.D.Inbaraj

11.R.Pravin

12.C.Yesurajan

13.J.Dhanasingh

14.S.Rajakili

15.Y.Thangadurai

16.Albert Krubaharan

17.Leela Ponmani

18.Robert Jebakumar

19.J.Glorinthal

.. Respondents /Defendants

PRAYER: Revision filed under Article 227 of Constitution of India against the judgment and decree dated 30.11.2017 passed in O.S.No.128 of 2011 on the file of the Subordinate Judge, Tirunelveli.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondents : Mr.J.Barathan
for respondents 1 to 3

Mr.R.Mohan
for 4th respondent

Mr.G.Prabhu Rajadurai
for 5th respondent

Ms.S.Sujatha
for respondents 13, 14, 15
and 19

Mr.Haja Mohideen Gisthi
for 18th respondent

No Appearance - (for R6 to
R12, R16 and R17)

ORDER

Aggrieved by the judgment and decree dated 30.11.2017 passed in O.S.No.128 of 2011 on the file of the learned Principal Sub-Court, Tirunelveli, dismissing the suit as infructuous, the



petitioner has filed the Civil Revision Petition. The petitioner is the 13th defendant and the respondents 1 to 3 are the plaintiffs in the suit.

2. For convenience, the parties are referred to as per their rank in the suit.

3. The plaintiffs have filed the suit in O.S.No.128 of 2011 before the learned Principal Sub-Court, Tirunelveli for declaration to declare that the election schedule declared by the third defendant was null and void and for permanent injunction restraining the defendants 2 and 3 from conducting elections for the first phase to fourth phase elections, commencing from 24.07.2011 to 29.09.2011 and 30.09.2011 and also for the T.D.T.A. Committee of Management in any manner. Alternatively, the plaintiffs have also prayed for appointment of a Committee consisting of minimum three members to supervise and to conduct the above elections under the supervision of the Court, according to the Constitution of Tirunelveli Diocese.

4. Along with the suit, the plaintiffs have filed I.A.No.205 of 2011 for appointment of Committee, consisting of minimum three members to supervise and to conduct the above elections under the supervision of the Court according to the constitution of the Tirunelveli Diocese.

5. Pursuant to various orders of the trial Court as well as in the Civil Revision Petitions filed by the parties, elections were held and finally, on 30.11.2017, the trial Court has passed the judgment. The relevant paragraphs of the judgment read thus:

"10. Hence, it is clear that the prayer in this suit became infructuous and this suit has to be dismissed as infructuous.

11. The 12th defendant by way of counter claim prayed for a permanent injunction restraining the 1 to 3 from conducting executive committee meeting without his presence and to set aside the report in I.A.No.292/2011. To substantiate his claim the 12th defendant was not examined before this Court. On his side no documents were marked and so he failed to prove his claim. Hence, counter claim is dismissed.

12. In the result, this suit is dismissed as infructuous. Both parties directed to bear their own costs.

The counter claim is dismissed. Both parties directed to bear their own costs."

6. Being aggrieved by the judgment and decree, the 13th defendant has filed this Civil Revision Petition.



7. I heard Mr.M.Thirunavukkarasu, learned counsel appearing for the petitioner, Mr.J.Barathan, learned counsel for the respondents 1 to 3, Mr.R.Mohan, learned counsel for the 4th respondent, Mr.G.Prabhu Rajadurai, learned counsel for the 5th respondent, Mrs.S.Sujatha, learned counsel for the respondents 13, 14, 15 and 19 and Mr.Haja Mohideen Gisthi, learned counsel for the 18th respondent and also perused the materials available on record. No representation on behalf of the respondents 6 to 12, 16 and 17.

8. The learned counsel for the petitioner (13th defendant) submitted that the trial Court erred in dismissing the suit as infructuous without rendering a finding on the reports submitted by the Commissioner and the trial Court overlooked the observation made by this Court in C.R.P.No.816 of 2017, dated 28.04.2017 granting liberty to the respondent and others to submit their grievance regarding the result of the fourth phase election and to seek redressal. He would submit that the trial Court proceeded as if there was no objection to the Commissioner's report.

9. The learned counsel further submitted that the trial Court failed to consider that it was the same Court which by its order dated 10.02.2017 rejected the report filed by the earlier Commissioner concluding the elections and had appointed a new Commissioner to conduct elections. He argued that the dismissal of the suit without rendering proper decree has resulted in confusion that there are several groups claiming to be in power and resulting in hundreds of disputes and notices against each other. The judgment of the trial Court is against the principles of natural justice.

10. The learned counsel for the petitioner further submitted that though a regular appeal under Section 96 of C.P.C. is maintainable against the decree in question, the petitioner was compelled to approach this Court under Article 227 of the Constitution of India since certain procedural irregularity had been committed by the trial Court. In support of his submissions, the learned counsel relied upon the following decisions:

- (i) C.R.P. NPD (MD) No.511 of 2009, dated 15.12.2011
(A.Perumalsamy and others v. A.Anand and others)
- (ii) 2005 Supreme (AP) 737 (Kota Sreevalli v. Chinni Seetharamaiah)

11. Per contra, the learned counsel appearing for the fourth respondent (first defendant) submitted that when a regular first appeal is maintainable, a Civil Revision Petition under Article 227 of the Constitution of India is not at all maintainable and prayed for dismissal of the Civil Revision Petition in limine. He would submit that pursuant to the orders passed in C.R.P.(MD) No.406 of 2017, dated 24.03.2017 and C.R.P.(MD) No.816 of 2017, dated 28.04.2017, the election process had been concluded and results were also declared. He submitted that the elected office bearers assumed



charge on 23.04.2017 on declaration. In fact, the Executive Committee of the Diocese had been convened on 15.05.2017 presided over by the Vice Chairman. Therefore, nothing survives for consideration in the suit and the trial Court was right in dismissing the suit, which warrants no interference.

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12. The learned counsel appearing for the respondents 1 to 3 (plaintiffs) submitted that pursuant to the directions issued in C.R.P.(MD) No.408 of 2017, dated 24.03.2017, the trial Court appointed Commissioner to proceed with the election for third phase and after completion of third phase, conducted election to fourth phase and the Commissioner had also filed his report and nothing to be adjudicated in the suit. In support, the learned counsel has produced a copy of the order passed in C.R.P.(MD) No.408 of 2017, dated 24.03.2017 (Tirunelveli Diocesan Trust Association and others v. P.Binekas Selvakumar Gnanaraj and others).

13. The following points arise for consideration in this Civil Revision Petition:

- (1) When a regular first appeal would lie against the decree and judgment in question, whether the Civil Revision Petition is maintainable?
- (2) Whether the trial Court was right in dismissing the suit as infructuous?

14. Relying upon the decision in Kota Sreevallli v. Chinna Seetharamaiah, supra, the learned counsel for the petitioner submitted that when serious procedural irregularity has been committed by the trial Court, the party can invoke Article 227 of the Constitution of India and in the case on hand, the trial Court erred in dismissing the suit as infructuous without rendering a finding on the reports submitted by the Commissioner.

15. In Kota Sreevallli v. Chinna Seetharamaiah, supra, the Andhra Pradesh High Court held as follows:

"6. When there exists a regular remedy of appeal, the High Court cannot examine the correctness of a decree, in the proceedings under Article 227 of the Constitution of India. However, it needs to be noticed that the very purpose of conferring supervisory jurisdiction under Article 227, is to arm the High Court with adequate power, to ensure that the subordinate Courts do not deviate from the settled principles of law, particularly, in the matter of procedure. A clear distinction needs to be maintained as to the adjudication of the findings recorded by the Courts, on the merits, on the one hand, and examination of deviations, if any, by the subordinate Courts, from the settled procedure, on the other hand. While the former is in the exclusive province of remedy of appeal, the latter can certainly constitute the subject matter of the revision under Article 227. It is in this context



that the present matter needs to be examined."

16. Let us examine the decision of the Andhra Pradesh High Court in Kota Sreevalli v. Chinna Seetharamaiah, supra. The said case arose out of the decree and judgment passed in O.S.No.132 of 2000 on the file of the Additional Senior Civil Judge, Ongole. Aggrieved by the judgment and decree, the defendants 3 to 5 and 8 therein have preferred Civil Revision Petition alleging the following defects in the judgment of the trial Court:

- (i) Joinder of independent causes of action;
- (ii) Non-impleading of the firm, which was said to have executed the pro-notes
- (iii) Enforceability of pro-notes, though not a single witness was examined to prove the same.

17. The next decision cited by the petitioner in A.Perumalsamy and others v. A.Anand and others, supra arose out of the judgment passed in O.S.No.70 of 1996 on the file of the District Munsif-cum-Judicial Magistrate Court, Periyakulam, wherein the trial Court, on finding the divergent evidence adduced on either side, dismissed the suit mainly on the ground that the trial Court was not having jurisdiction in view of the bar created under Section 16-A of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969. Challenging the same, the plaintiffs therein have preferred the Civil Revision Petition before this Court. In the facts and circumstances of the case, the learned Single Judge of this Court observed as under:

"16. Since question of maintainability has already been discussed and sealed by way of passing order in CRP.No.3968 of 1999, the Court below is not at all having power to decide the present suit on the basis of maintainability and therefore, the judgment and decree passed by the Court below are nothing but absurd and the same are liable to be set aside by invoking Article 227 of the Constitution of India and the matter is liable to be remitted to the file of the Court below."

18. Admittedly, in the case on hand, the maintainability of the suit has not been raised and argued. In the facts and circumstances of the case and in view of the proceedings recorded from the date of filing of the suit, the trial Court arrived at a decision dismissing the suit as infructuous. Therefore, the decision in A.Perumalsamy and others v. A.Anand and others, would not in any way help the case of the petitioner.

19. As far the decision in Kota Sreevalli v. Chinni Seetharamaiah, supra is concerned, as stated supra, finding three defects in the trial Court judgment, the Andhra Pradesh High Court, set aside the judgment of the trial Court and remitted the matter to the trial Court by arriving at a finding that the trial Court had committed an error qua the very basic procedure and the same needs



to be corrected in exercise of power of superintendence under Article 227 of the Constitution of India.

20. In the case on hand, admittedly, the facts and circumstances of the case and proceedings went on from the date of institution of the suit till the date of delivery of judgment and they are distinguishable.

21. On examination of the case of the plaintiffs, I find that the plaintiffs have sought declaration to declare that the election schedule declared by the Bishop of Tirunelveli Diocese was null and void and for consequential permanent injunction restraining the Diocese of Tirunelveli and the Bishop from conducting the elections for the first to fourth phase. Alternatively, the plaintiffs have also sought appointment of a Committee to supervise and to conduct the election under the supervision of the Court according to the Constitution of Diocese of Tirunelveli in a fair and free manner. Along with the suit, the plaintiffs have filed I.A.No.205 of 2011 praying for interim order for appointment of a Committee.

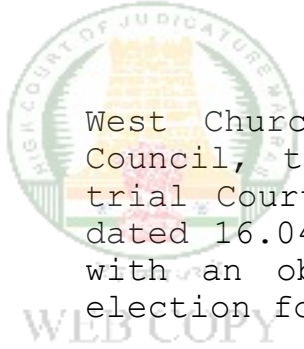
22. The election in question was scheduled in four phases. The first phase of election was for the Pastorate Committees and the Diocesan Councils. The second phase was for the Church Councils. The third phase of election was for the Diocesan Executive Committee and the fourth phase of election was for the selection of Office bearers of the Diocese. The election to each phase will have a bearing on the next phase of election.

23. It appears that the plaintiffs have filed the suit and also filed application seeking appointment of Committee because of the biased attitude of the Bishop. Though some of the defendants have opposed the appointment of Committee, considering the real dispute involved in the suit, the trial Court appointed one Mr.Roby, a retired District Judge as Commissioner to conduct the elections. The Commissioner conducted elections for the phases 1 and 2 and submitted his report.

24. After filing the report, the defendants 2 and 3 have made allegations against the Commissioner by filing I.A.No.272 of 2011. In the meanwhile, the Commissioner had filed a Memo before the trial Court expressing his unwillingness to continue as Commissioner. After discharging Mr.Roby as the Commissioner, the trial Court appointed one Mr.P.Soundarapandian, a retired District Judge as Commissioner to conduct the further phases of election. Accordingly, Mr.P.Soundarapandian, Commissioner conducted the election of five Church Councils excluding the North Church Council through observers appointed by the Court and had submitted his report to the trial Court, however, counting of ballot papers for the South Church Council had been stopped in view of the orders passed by the City Civil Court, Chennai.

<https://hcservices.ecourts.gov.in/hcservices/>

25. Being dissatisfied with the counting process qua North



West Church Council, South West Church Council and West Church Council, the plaintiffs have filed I.A.No.292 of 2011 before the trial Court praying for recounting of ballot papers. By an order dated 16.04.2012 and 20.04.2012, the trial Court ordered recounting with an observation that after recounting process was over, the election for the next phase should go on.

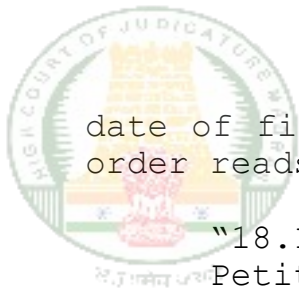
26. In the meanwhile, the Commissioner Mr.P.Soundarapandian filed a Memo stating that he was not inclined to continue as Commissioner. Pursuant to the Memo, the trial Court appointed one Mr.Retnaraj, a retired District Judge as Commissioner to pursue the election process, including recounting of ballot papers for West Church Council, North West Church Council and South West Church Council.

27. It appears that challenging the order of recounting, one Mr.J.Peter John, who was not a party to the suit, had filed C.R.P. (MD) No.1081 of 2012 and another person by name Mr.M.M.Thurai had also filed C.R.P.(MD) No.1030 of 2012 challenging the order of recounting. By a common order dated 06.12.2012, while disposing of the revisions, this Court permitted those persons to participate in the recounting process.

28. Pursuant to the order passed in the aforesaid revisions, the Commissioner Mr.Retnaraj recounted the votes on various dates and submitted his report to the trial Court on 26.02.2013. The Commissioner had also conducted the fourth phase elections on 16.03.2013 and filed his report. Thereafter, the plaintiffs have filed I.A.No.298 of 2013 to receive objections to the Commissioner's report and to set aside the same and also to order conducting of fresh third phase of elections in respect of South West Church Council and West Church Council and fresh fourth phase of election for the Diocesan Executive Committee.

29. It appears that challenging the report of the Commissioner dated 26.02.2013, the 12th defendant filed C.R.P.(MD) No.1362 of 2013 and this Court while disposing of the revision, directed the parties to approach the trial Court. Challenging the order passed in I.A.No.298 of 2013, the defendants 1 to 3 have filed C.R.P.(MD) No.408 of 2017 and the petitioner and three others have filed C.R.P.(MD) No.479 of 2017.

30. By an order dated 24.03.2017, the learned Single Judge of this Court, while dismissing Civil Revision Petitions, observed that in the interest of justice, the election may be restricted from third phase only for the three Church Councils i.e., South West Church Council, North West Church Council and West Church Council. It was also observed that after conclusion of third phase election for the above three Church Councils, the Commissioner shall proceed to conduct the election for the fourth phase and file his report into the court. After completion of fourth phase election as per bye-law, the term of elected office bearers shall commence from the



date of first meeting for four years. The operative portion of the order reads thus:

"18. In view of the above facts, the Civil Revision Petitions are dismissed as devoid of merits. The learned Additional Subordinate Judge, has not appointed any Commissioner. The learned Additional Subordinate Judge, Tirunelveli, is directed to appoint a Commissioner forthwith with a direction to the Commissioner to proceed with the election for 3rd phase in respect of South West Church Council, North West Church Council and West Church Council and after completion of election to the 3rd phase, conduct election to the 4th phase within three months from the date of appointment and file a report into the court on completion of 3rd and 4th phase elections."

31. Pursuant to the order passed in the aforesaid two revisions (CRP.(MD)Nos.408 and 479 of 2017), the trial Court appointed one Mr.Dharmaraj, Advocate as Commissioner and the Commissioner had conducted the third phase elections for the three disputed Church Councils and subsequently, to the fourth phase, the Diocesan Council. Thus, the appointment of Commissioner and conducting of elections to the disputed Church Councils and also the fourth phase are all as per the directions of the order of the learned Single Judge of this Court and till date, nobody had questioned the same by way of filing suits or in other manner. Admittedly, the petitioner has not challenged the order passed in C.R.P.(MD) Nos.408 and 479 of 2017 any further. If really, he is aggrieved by the order passed in the aforesaid revisions, he ought to have filed appeal before the appropriate Court. In the case on hand, neither the petitioner nor the aggrieved persons, if any, have preferred any appeal and the order passed in C.R.P.(MD) Nos.408 and 479 of 2017 became final.

32. It is to be noted that challenging the elections conducted by the Commissioner Mr.Dharmaraj, the defendants 2 and 3 have filed C.R.P.(MD) No.816 of 2017. By an order dated 28.04.2017, the Civil Revision Petition was closed by observing as under:

"10. The 4th phase of election has been concluded under the supervision of the Advocate Commissioner appointed by this Court. It is submitted by the counsel for the respondents that result for the 4th phase election has already been published and the report of the Commissioner is also been served to the parties. So, nothing more survives in these civil miscellaneous petitions and therefore, there is no necessity to entertain CMP(MD) No.4026 to 4028 and 4350 of 2017 and CRP SR (MD) No.19225 of 2017. Any grievance regarding the result of the 4th phase election, the aggrieved parties are at liberty to approach the trial Court where the suit is pending and seek redressal.



With the above observation, this Civil Revision Petition is closed as no further order is required to be passed now. No costs. Consequently, CMP(MD) No.3649 of 2017 is closed and CMP(MD) Nos.4026 to 4028 and 4350 of 2017 and CRP.SR(MD) No.19225 of 2017 are dismissed."

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33. From the above order, it is seen that while closing CRP (MD)No.816 of 2017, the trial Court observed that the aggrieved parties are at liberty to approach the trial Court qua result of the 4th phase election.

34. Nothing has been produced by the petitioner to show that how he is prejudiced by the decree and judgment of the trial Court in O.S.No.128 of 2011 dismissing the suit as infructuous. In fact, as stated supra, the third phase and fourth phase elections were conducted as per the orders of this Court that too in the presence of the Court appointed Commissioner and the Observer.

35. The learned counsel for the fourth respondent (1st defendant) submitted that in fact the elected office bearers assumed charge on 23.04.2017 on declaration of results. He also submitted that the Executive Committee of the Diocese had been convened on 15.05.2017 presided by the Vice Chairman Rev. A.H.L. Billy at the Diocesan Office, Tirunelveli and it was attended by 33 members out of 55 members.

36. On a perusal of the typed set of papers, I find that the plaintiffs have filed I.A.No.553 of 2017 in O.S.No.128 of 2011 under Order 15, Rule 3 of C.P.C. seeking permission of the Court to dispose of the suit on 29.08.2017, wherein the respondents, including the petitioner, took several adjournments for filing counter and finally some of the respondents have filed their counter. On 29.11.2017, arguments in I.A.No.553 of 2017 were heard and the matter was posted for orders on 30.11.2017.

37. It appears that I.A.No.553 of 2017 has not been seriously objected by the petitioner. On 30.11.2017 in I.A.No.553 of 2017, the learned trial Judge recorded that since judgment in O.S.No.128 of 2011 had been pronounced and disposed of, the petition became infructuous and dismissed the same as infructuous.

38. Knowing that everything went well and nothing to be agitated in the suit, the plaintiffs have filed I.A.No.553 of 2017 seeking permission of the Court to dispose of the suit. The petitioner has also not produced any material to show that the plaintiffs colluded with the other defendants have filed I.A.No.553 of 2017. As dominus litus, the plaintiffs have every right to file such application seeking to close and/or dispose of the suit and there is no bar on the plaintiffs to file such a petition.

39. It is seen that elections were conducted under the supervision of Mr.H.Thayumanasamy and for all four phases elections



were concluded, which would show that no issues remain in O.S.No.128 of 2011 to be adjudicated by the trial Court.

40. It is to be noted that originally the suit has been filed against the defendants 1 to 4. Pending suit, the defendants 5 to 16 have filed petition to implead themselves as defendants in the suit and the same was allowed. In fact, the plaintiffs have not sought any relief against the petitioner in the suit.

41. According to the plaintiffs, the cause of action for the suit arose from the year 2007 when the date of announcement of election and the elections were challenged by the members of Diocese in various Courts from District Munsif Court to Hon'ble Supreme Court and on (Nil) when the third defendant announced the election process against the rules and at Palayamkottai where the office of the Diocese situates.

42. Thus, the cause of action pleaded by the plaintiffs in the suit has become infructuous, in view of the elections held and results declared and therefore, the trial Court has rightly come to the conclusion that no issues remain in this case to be decided by the Court. I find that there is no perversity in the decision of the trial Court in coming to such conclusion.

43. It is apposite to note that the defeated candidates did not challenge the declaration of results by the Commissioner. Being satisfied with the result of elections, the plaintiffs have not taken steps either to amend the plaint seeking suitable prayer or filed any separate suit challenging the validity of the election results.

44. When the prayer in the suit is to declare the election schedule announced by the Bishop as null and void and to appoint Commissioner for conducting of elections and since the elections had been conducted by the Court appointed Commissioner in the presence of Observer, nothing survives for adjudication in the suit. Therefore, the trial Court was right in dismissing the suit as infructuous.

45. From the aforesaid narration of facts, I am of the firm view that since the issues in the suit were already settled, the trial Court has rightly dismissed the suit as infructuous. In the given facts and circumstances of the case and also the factual aspects decided by the trial Court in the suit, the decision of the Andhra Pradesh High Court in Kota Streevalli v. Chinni Seetharamaiah, supra relied on and pressed into service by the learned counsel for the petitioner is clearly distinguishable from the facts and circumstances of the case on hand and the said decisions will not in any way help the case of the petitioner, as the same had been decided in different context.

46. When the plaintiffs themselves have filed an application



seeking permission of the Court to dispose of the suit finding that there is no issue left to be adjudicated in the suit, the trial Court has dismissed the suit as infructuous and the reasoning given for arriving such conclusion by the trial Court is acceptable and there is no perversity.

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47. However, it needs to be noticed that the very purpose of conferring supervisory jurisdiction under Article 227 of the Constitution of India is to arm the High Court with adequate power to ensure that the subordinate Courts do not deviate from the settled principles of law, particularly, in the matter of procedure.

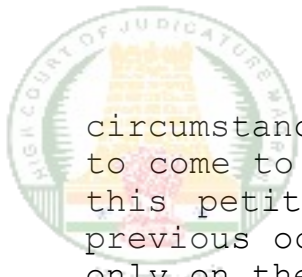
48. In the case hand, as stated supra, the trial Court has not deviated from the settled principles of law and it had not violated the procedure. Since the relief sought for in the plaint need not be adjudicated as the so called elections were held pursuant to the orders of the Court and results were declared, nothing would survive for consideration in the suit.

49. Interestingly, the petitioner, who was arrayed as 13th defendant has not filed his written statement in the suit and in fact, he has no locus standi to defend the suit in the absence of any written statement.

50. It is to be noted that if any order was passed by the trial Court, either the petitioner or other persons were in the habit of preferring revision before this Court and pursuant to the order passed in the revision, further progress took place in the suit and all four phases of elections were concluded only pursuant to the orders of this Court as well as the trial Court under the supervision of the Commissioner and/or Election Observer.

51. The learned counsel for the petitioner stated that on the strength of the liberty granted by this Court in its order dated 28.04.2017, the petitioner filed applications to implead and that the same were not taken on file and hence, they are before this Court again by way of revision, challenging the decree. This argument need not detain them for long.

52. I have gone through the typed set and the relevant petition and affidavit are enclosed in pages 77 to 84. This argument relying on the liberty granted by the Court is an ingenious one. The liberty was granted to approach the Court on 28.04.2017. However, even the application, on which the petitioner places his case was filed even a month earlier. The seal of the Subordinate Court shows that the petition was filed on 28.03.2017, 03.04.2017, 10.04.2017 and finally on 29.04.2017. Further, the petition itself was filed through one Mr.M.K.Ravindran Charles, B.A., B.L., Advocate, Tirunelveli and Mr.Bharathan, learned counsel for the respondents 1 to 3 states that the learned counsel is also the legal advisor for Rt.Rev.J.J.Christodoss and it is not denied by the learned counsel for the petitioner. This fact, in addition to the other



circumstances set forth in this judgment, this Court is constrained to come to the conclusion that there is a unity of interests between this petitioner and the persons who approached this Court on the previous occasions and lost. In fine, the argument that it was filed only on the basis of the liberty granted is not at all tenable.

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53. Further, even if he was to assume that the same was filed only on the basis of the liberty, this argument still has to fail because on several reasons:

(1). The petition itself was returned on 12.05.2017. Till date, the petitioner has not represented the papers nor have they taken to set it aside in a manner known to law.

(2). The petitioner recollect here that this proceeding is one under Order 1 Rule 8. Therefore, there is no necessity or the petitioner to file a separate petition. The decree granted in the suit binds one and all.

(3). The petitioner was given liberty by this Court to file his objections in the suit. Not to file a petition to implead themselves and thereby keep the suit proceedings alive.

(4). The petitioner is one of the candidates to the election even filed objections to the commissioner's report.

54. It is unknown of a person, not even filing an objection to the Commissioner's report to seek to set aside the order of the Court, accepting the same. This shows that the litigation has not been launched for bonafide purposes. Apart from this, the petitioner is a fence sitter. He was waiting and watching the proceeding. The order was passed by the trial Court accepting the report and dismissing the suit has infructuous on 30.11.2017. He waited till 25.04.2018 to move this Court through this revision, whereas the seal of the copyists department is dated 15.12.2017. If really aggrieved, the petitioner could have immediately moved the Court. However, he waited till the educational institutions started the process of admissions to throw a spanner in the works. This is clear from the injunction application sought for by the petitioner and extract the prayer:-

"to pass an order of injunction restraining the respondents 4 and 5 and its officers, managers, committees, employees and agents from making appointment, ordination and effecting transfer in the posts in Tirunelveli CSI diocese and Tirunelveli Diocesan trust association and the educational institutions, churches, hospitals run by them, pending disposal of the above civil revision"

55. Admittedly, the persons who were supporting Rt. Rev. J.J. Christdoss, had lost the election as noted above, the interests of the Bishop, who lost the litigation till before the Hon'ble Supreme Court and the interest of the petitioner coalesce. The entire litigation seems to be a device to prevent the office bearers, who have been elected pursuant to the steps taken by this Court from functioning. Such an act is a sheer abuse of process of the Court.



56. This Court had attempted to define what is an abuse of process of Court in the case of Ranipet Municipality v. M. Shamsheerkhan, 1998 (1) CTC 66. This Court held:-

“A party to a litigation is said to be guilty of abuse of process of the Court, in any of the following cases:-

(1) Gaining an unfair advantage by the use of a rule of procedure.

(2) Contempt of the authority of the Court by a party or stranger.

(3) Fraud or collusion in Court proceedings as between parties.

(4) Retention of a benefit wrongly received

(5) Resorting to and encouraging multiplicity of proceedings.

(6) Circumventing of the law by indirect means.

(7) Presence of witness during examination of previous witness.

(8) Institution vexatious, obstructive or dilatory actions.

(9) Introduction of Scandalous or objectionable matter in proceedings.

(10) Executing a decree manifestly at variance with its purpose and interest.

(11) Institution of a suit by a puppet plaintiff.

(12) Institution of a suit in the name of the firm by one partner against the majority opinion of other partners etc. (emphasis supplied)

57. I am of the firm opinion that this case makes comes within the teeth of a more than one of the norms laid down by this Court, this itself is sufficient to dismiss this revision. However, as stated supra, I would like to bring forth how a slew of litigations were commenced in order to prevent the implementation of the orders of this Court. The unsuccessful parties have tried every trick in the book in order to thwart the orders of this Court. Mr. Bharathan has brought to my attention several orders passed by this Court on every occasion, it has fallen on this Court to come to the rescue to those elected. The petitioner has given the details of the orders hereunder:

“(i) One Rev. A. Jesu Nesapandian claiming to be the manager of TDTA primary and middle schools filed W.P. (MD) No. 12451 of 2017. He sought for police protection so as to continue in office. That writ petition was dismissed by this Court holding that writ Court cannot grant such reliefs.

(ii) After the order dated 28.04.2017, the unsuccessful litigants moved the Executive Magistrate to prevent the functioning of those successfully elected. That quasi-judicial authority, instead of following the orders of this Court, was emboldened to initiate proceedings under Section 107 of the Criminal Procedure Code, 1973. This Court had to keep the proceedings in abeyance in CrI.O.P. (MD) No. 12333 to 12338 of 2017 dated 18.07.2017.

<https://hcservices.ecourts.gov.in/hcservices/>

(iii) Despite the proceedings of the Executive Magistrate being kept in abeyance, yet again the said authority, for reasons



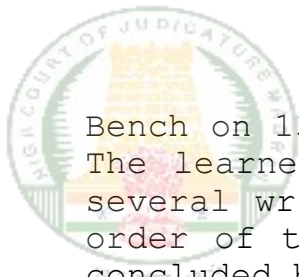
best known only to him, initiated fresh proceedings under Section 107. That proceeding was quashed by this Court in CrI.O.P.(MD) No.16751 to 16758 of 2017 on 18.12.2017. This Court has categorically held as follows:-

"4....it is clearly mentioned in the said notice that the petitioners herein have won in the diocese elections. A reading of the material on record shows that the petitioners herein are the successful candidates in the diocese elections which was bitter and acrimonious. It is beyond dispute that the election was conducted under the aegis and supervision of Court appointed officers. Therefore, obviously the petitioners are entitled to hold the office to which they have been duly elected....

5.....Section 107 Cr.P.C. cannot be interpreted to mean that action can be taken even against those engaged in doing something legitimate and legal on the ground that their acts are likely to cause breach of peace. It would be stifling the legitimate rights of the citizens....as rightly pointed by the learned counsel for the petitioners, the present proceedings appear to have been initiated only to overreach the earlier interim orders granted by this Court on 18.09.2017 in Cr.O.P.(MD)No.12333 to 12338 of 2018."

(iv).One Dr.Joel filed W.P.(MD)No.11130 of 2017. This writ petition was one which challenged the relieving of the petitioner from the services of C.S.I. Jayaraj Annapackiam College, Nallur on 07.06.2017. Instead of confining themselves to the merits of that case, a collateral attack was launched challenging the right of the secretary and correspondent to function in that capacity. The learned Judge of this Court reinforced the right of the secretary in the following terms:-

"15.One of the contentions of the learned counsel for the petitioner is that seventh respondent has no jurisdiction to effect the appointment, transfer, termination, etc. It may be mentioned that this Court has already passed an order in CRP(MD)Nos.408 and 479 of 2017, dated 24.03.2017, holding that after the completion of fourth phase election as per the bye-law, the term of elected office bearers shall commence from the date of first meeting for 4 years. Subsequent to this order, the seventh respondent herein has been continuing in the post of Secretary and Correspondent of the said College from 01.07.2017 and since then, he has been discharging the affairs and administration of the said College, therefore, the above said contention of the petitioner that the seventh respondent has no jurisdiction to pass the impugned proceedings also cannot be sustained."



Bench on 13.02.2018 clarifying that it was a collateral observation. The learned counsel for the respondents also states that there are several writ petitions and suits filed collaterally challenging the order of this Court in the revisions, despite the same having been concluded by the dismissal of the special leave petition.

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58.If such is the case with educational and law enforcing authorities, another shocking attempt made by the petitioner to overreach the orders passed by this Court. My attention was drawn to two proceeding of the Synod of the Church of South India at Chennai. This is found in pages 17 to 26 of the additional typed set filed by the petitioner. According to learned counsel appearing for the petitioner, the synod of the Church of South India is the highest representative body of the CSI. He would state that it is the Supreme governing and legislative body and the visible symbol of its unity. He would state that the Synod met on 31.05.2017 and decided that the elected body stands dissolved and that it will take over management of the CSI Tirunelveli diocese. On the strength of this "order", the learned counsel will submit that the elections conducted by the Commissioners appointed by the Court has lost its relevance and that it is the administrative body appointed by the Synod which should decide the further course of action.

59.If this Court have understood his argument right, according to him, though this Court had held in CRP(MD)No.408 of 2017 and CRP(MD)No.479 of 2017 that the period of the elected office bearers would commence only from the date of their assumption of office, the Synod has the power not to recognise the same as it is not a party to the dispute. Such a submission is not only shocking because it places the Synod above the regularly constituted Civil Courts. When this Court has held that tenure of office will commence from the date of assumption of the office, the Synod cannot act as an appellate authority over this Court and decide that it is not so. The entire proceeding dated 31.05.2017 is exfacie collusive for the reason that the Bishop of Tirunelveli, who was an active litigant before this Court, appears before the Synod and readily concedes to the proceeding dated 31.05.2017. In order words, having lost before the Court, the bishop instead of respecting the orders, has in active connivance with those in the synod, has attempted to set at naught the verdict of the Civil Courts.

60.This is extremely distressing because the report of the Advocate Commissioner's reveal that the Bishop not only played an active role in the conduct of elections. Constraining the Civil Court to appoint a retired District Judge as a Commissioner on more than on occasion but nominated his own wife as a candidate for the election. Having taken part in the game and lost, it is sad that a high dignitary, as a bishop of the church, instead of being an example to his flock and obeying the orders of the Court, he should resort to plots and means to get over the orders. Even more distressing is fact that instead of giving good advice to his fellow man of the frock, the moderator has played a role in the attempts to



subvert the orders of the Civil Court.

61. I am constrained to deal with this issue because it has been raised by the petitioner and I cannot ignore that an authority seeks to play ducks and drakes with the orders of this Court. Therefore, I have to necessarily answer the same. The petitioner and the 6th respondent are working in tandem. If legitimacy is given to the orders placed before me, it would not only be accepting the so called supremacy of the synod over the orders of this Court but hit at the root of the judicial hierarchy of this country.

62. It is pertinent to note that the Synod had consistently taken a position that elections are matters which are internal to individual diocese and that they are not concerned with the same. When disputes arose in the very same diocese in 2007, a suit had been filed before the Original Side of this Court an application was taken seeking leave to sue on the ground that as the synod is situated in Chennai, the Principal Bench has the jurisdiction rejecting that the synod had the power to deal with elections in a diocese, the Court dismissed the leave to sue petition - M. Isaac Versus The Church of South India, rep. by its Moderator & Others, 2009 (2) CTC 631 and this Court held as follows:-

"18. By a careful reading of the Rules under Chapter VIII, it is seen that Diocesan Council has power to frame, amend or alter its own Constitution and the Diocesan Council is to deal with matters, which concern its own Diocese. Each Diocese would exercise the powers and function of administration within its Territory on the basis of its own Constitution. To put it shortly, Tirunelveli Diocese would be governed by its extant Rules Constitution of Tirunelveli Diocese. The Diocese is governed by its own Rules and its own Constitution. As per Chapter VIII, Rule 3, Diocesan Council shall state in its own Constitution the necessary qualification and method of election. Chapter VIII, Rule 3 reads as under:

"Every Diocesan Council shall state in its own constitution the necessary qualifications, and method of election or nomination of the lay representatives in it provided that these qualifications shall be in conformity with Chapter IV, Rule 4."

It is thus evident that election to Tirunelveli Diocese and method of election or nomination of the lay representatives and election to the Executive Committee shall be in accordance with Tirunelveli CSI Diocese Rules. In conducting of the election to Tirunelveli Diocese Synod has no role to play.



20.As rightly submitted by the learned counsel for the First Respondent-Moderator has nothing to do with Tirunelveli Diocese election Synod, which deals with the common interest of the Church, hardly has any role to play in Tirunelveli Dioceses Council election. While so, the First Respondent is not at all a necessary party to this Suit. Even, if certain allegations are levelled against the Bishop, that is not the ground for the Moderator to interfere in the internal administration of Tirunelveli Diocese."

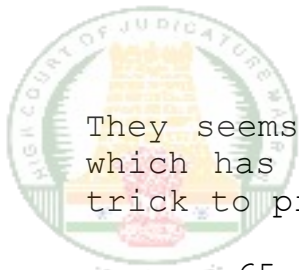
This view of the learned Judge found accepted and followed by another learned Judge of this Court in the Diocese of Tirunelveli v. The Church of South India, C.R.P.(PD)Nos.2527 to 2529 of 2008 and C.R.P.(PD)Nos.2601 and 2602 of 2008 dated 18.08.2008. In other words, the consistent view of the moderator of the CSI, the synod will not interfere with the internal management and administration of the constituent diocese but would only deal with matters of common interest. Surprisingly, when in the present situation, he seems to have preferred the wishes of the Rt.Rev.J.J.Christudoss to obeying the orders of the Civil Court. The foundation of the judiciary is implicit obedience to its orders. If that is questioned by a party, it will shake the confidence of the people.

63.Even looking at it in a pure juridical manner, I cannot reach any other conclusion. This is for the following reason. As set forth in the facts of the case, the suit was presented in a representative capacity, after complying with the principles of Order 1 Rule 8 of the C.P.C. It is here that Explanation VI to section 11 becomes relevant. The said provision reads as follows:-

"Where persons litigate 'bona fide' in respect of a public right or of a private right claimed in common for themselves and others all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating."

Consequently, all the orders passed in that proceeding are binding on parties claiming under the defendants or through them. By the proceeding dated 31.05.2017, the synod has by the consent of the bishop taken over his role and consequently, the orders and decree passed in the proceeding are binding on the synod also. This is especially so when the foundation for the synod proceeding is based on the consent of the Rt.Rev.J.J.Christudoss. It is the duty of this Court to clarify this position as the CSI diocese is running a lot of educational and medical institutions and they must not suffer due to repeated litigations at the hands of persons like the petitioner and those who have propped him.

64.In fine, I hold that the present revision is another attempt at the instance of unsuccessful candidates to place another road block in the smooth functioning of the diocese of Tirunelveli.



They seems to unable to digest that they have lost the elections, which has been held in a free and fair manner and have tried every trick to prevent the institution from functioning.

65. The reason for arriving at a decision by the trial Court in dismissing the suit as infructuous was absolutely based upon the proceedings that went on and were recorded in the suit. The Civil Revision Petition filed by the petitioner is wholly misconceived and the same is liable to be dismissed.

66. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The Principal Subordinate Judge,
Tirunelveli.

+1CC to Mr.M.Thirunavukkarasu, Advocate in Sr.No.79420.

+2CCS to Mr.T.R.Jeyapalam, Advocate in Sr.No.79627.

VSV

DS SKN SAR-1 ;29.08.2018; 19P/5C

C.R.P. (MD) (PD) No.970 of 2018

and

CMP (MD) No.4271 of 2018

21.08.2018