

A MOHAN M. BASELIOS MARTHOMA MATHEWS Li AND ORS.

v.

STATE OF KERALA AND ORS.

APRIL 4, 2007

B [S.B. SINHA AND MARKANDEY KATJU, JJ.]

Constitution of India, 1950:

C *Article 226—Writ petition involving disputed questions of rights and title to properties—Dispute between religious groups regarding rights and privileges of Catholics cum Malankara Metropolitan of Malankara Church and properties of Church—Writ Petition by one group seeking a writ of mandamus to State authorities to provide police protection to them for exercise of their rights against private respondents—Observation of High*
D *Court on merits of the case regarding rights and title of parties—Held, 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 in the garb of grant of police protection—The*
E *High Court committed a manifest error in going into the disputed questions of title and 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.*

F *Article 136 read with Article 226—Question of maintainability of writ petition filed before High Court—Held: while exercising jurisdiction under Article 136, Supreme Court can go into the question whether writ petition could have been entertained by High Court, particularly, when appeal is continuation of original proceedings—Appeal.*

G *Appellants filed a writ petition before the High Court praying, inter alia, for a writ of mandamus directing respondents 1 to 4, the State authorities, “to give effective and adequate police protection to petitioners to exercise their rights, duties and privileges as The Catholicos cum Malankara Metropolitan of the Malankara Church with respect to the certain Parishes and Institutions of the Malankara Church without any threat or obstruction from respondents*

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5 to 13." Claims were also raised over the properties of the Churches in relation whereto about 200 civil suits were pending in different courts in the State. The High Court went into the merits of the matter and holding, *inter alia*, that it cannot be said that contesting respondents had no right to manage the properties or that petitioner no.1 had any right over the Churches which were parties in the case, declined to issue the writ of mandamus as prayed for. Aggrieved, the writ petitioners filed the present appeals.

During the pendency of the appeals, appellant no.1 resigned from the post of Catholicos of Malankara Metropolitan, and the application for substitution filed by his successor was opposed by the respondents contending that question with regard to the validity or otherwise of election of Catholicos was pending consideration in a suit.

Disposing of the appeals and dismissing the impleadment application, the Court

HELD: 1.1. 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.

[Para 12] [883-D]

P. R. Murlidharan & Ors. v. Swami Dharamananda Theertha Padar & Ors., [2006] 4 SCC 501, relied on.

1.2. The High Court committed a manifest error in going into the disputed question of title as also the disputed question 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. This is more so in view of the fact that even a large number of persons who have filed different suits in different courts of law were not parties before the High Court in the writ petition and, thus, any observation and findings of the High Court would otherwise also not be binding on them. Any observation made by the High Court should not influence the Courts concerned in arriving at their independent decisions and in respect thereof, all contention of the parties shall remain open.

[Paras 15 and 16] [884-B, D]

2. Despite the fact that the appellants had insisted upon before the High

A Court for issuance of a writ or direction in the nature of mandamus upon the State or its officers for the purpose of grant of police protection, as this Court has exercised its appellat jurisdiction under Article 136 of the Constitution, it can and should go into that question as well, viz., as to whether the writ petition itself could have been entertained or not, particularly, when the appeal is a continuation of the original proceedings. [Para 13] [883-E-F]

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3. As regards interpretation of judgment in *Most Rev. P.M.A. Metropolitan**, suffice it to say that there being a Letters Patent Appeal pending before the High Court, this Court refrains from going into the contention. [Para 14] [883-G; 884-A]

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**Most. Rev. P.M.A. Metropolitan & Ors. v. Moran Mar Marthoma & Ors.*, AIR (1995) SC 2001, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5460-5466 OF 2004

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From the Judgment and Order dated 28.01.2003 of the High Court of Kerala at Earnakulam in O.P. Nos. 22946 of 2002(F), 28495 of 2002(P), 29100 of 2002(L), 30100 of 2002(G), 30421 of 2002(V), 31059 of 2002 (V) and 39270 of 2002(Y)

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R.F. Nariman Sr. Adv., E.M.S. Anam and Fazlin Anam for the Appellants.

K. Parasaran, T.R. Andhjarujina, Anil Diwan and T.M. Mohd Yousuff Sr. Adv., P.J.Philip, A Raghunath, Sudarsh Menon, Mahesh Singh, Shakil Ahmed Syed, P. SSurensan, P. V. Dinesh, Sindnu T. P., Naveen R. Nath, Netu Arora, Lalit Mohini Bhat, P.K. Manohar, M. T. George and G. Ramakrishna Prasad for

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the Respondents.

The Judgment of the Court was delivered by

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S.B. SINHA, J. Dispute between the parties centres round the management of a large number of Churches known as "Syrian Churches". The present controversy arises in regard to the interpretation of a decision of this Court in *Most. Rev. P.M.A. Metropolitan and Ors. v. Moran Mar Marthoma & Ors.*, AIR (1995) SC 2001. A writ petition was filed by the appellants herein before the Kerala High Court, praying *inter alia*, for the following reliefs:

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"a. In the above facts and circumstances of the case this Hon'ble Court may kindly be pleased to issue a writ of mandamus or any other

appropriate writ order or directions commanding respondents 1 to 4 and their subordinates to give effective and adequate police protection to the First Petitioner to exercise his rights, duties and privileges as The Catholicos cum Malankara Metropolitan of the Malankara Church with respect to the Parishes mentioned in Exhibit P4 and Institutions of the Malankara Church without any threat or obstruction from Respondents 5 to 13 or their agents or servants in any manner.

b. To issue a writ of mandamus or any other appropriate writ order or directions commanding respondents 1 to 4 to give effective and adequate police protection to Petitioners to exercise their rights, duties and privileges as Metropolitans of the Malankara Orthodox Syrian Church under the First Petitioner without any threat or obstruction from the Respondents 5 to 13 or their agents or servants in any manner.

c. To issue a writ of mandamus or any other appropriate writ order or directions commanding respondents 1 to 4 to give effective and adequate police protection to other Bishops similarly placed as well as to the faithful members of the Malankara Church for the purpose of participating in the conduct of religious services in the said Parish Churches of the Malankara Church by petitioners without any threat or obstruction from Respondents 5—13 or their agents or servants in any manner.

d. Issue a writ of mandamus or any other appropriate writ order or direction commanding respondents 1 to 4 to take steps to see that respondents 5 to 13 do not enter into any of the churches of the Malankara Orthodox Syrian Church mentioned in Exhibit P4 and Institutions of the Malankara Church in any capacity either as Catholicose, Bishop, Priest or in any other manner.

e. Issue appropriate directions to Respondents 1 to 4 to restrain respondents 5 to 13 from in any way obstructing the petitioners from exercising the powers in accordance with the provisions of 1934 Constitution of the Malankara Church with respect to the Parish Churches, of the Malankara Church mentioned in Exhibit P4 and Institutions of the Church.

f. Direct respondents 5 to 13 to pay the cost of this petition to the petitioners."

A 2. One of the contentions which has been raised before the High Court was the maintainability of the writ petition on the premise that it could not have gone into the disputed questions of fact and, particularly, the application of the said judgment in relation to Parish Churches. Appellants, however, raised a contention that the writ petition was maintainable as the State and its officers having regard to the provisions contained in Article 144 of the
B Constitution of India are duty bound to give effect to the decision of this Court.

3. The High Court in view of the rival contention of the parties formulated two questions for its consideration:

C “1. Are the contesting respondents bound by the judgment of their lordships of the Supreme Court in *Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma*, AIR (1995) SC 2001?

D 2. Is a case for the issue of a writ of mandamus as prayed for by the petitioners made out?”

E 4. Upon noticing the contentions raised on behalf of the parties, including the one that the appellants herein had raised claims over the properties of the aforesaid Churches; in relation whereto there exists serious dispute and about 200 civil suits are pending in different courts in the State of Kerala.

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:

F “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;

G 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;

H 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 A
so;

iv. Police help cannot be ordered for the mere asking. It involves B
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 B
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 C
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 D
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 D
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 E
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 F
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 G
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. H

A 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-à-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 B 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 C 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:

D "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:

E "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 F 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 G in respect of property, status or 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 H 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.”

11. Learned senior counsel appearing on behalf of the respondents herein contend that the appellants before us cannot be permitted to take a different stand now, nor can they be allowed to play fast and loose. The High Court had arrived at its opinion only at their behest. Our attention in this behalf has also been drawn even to the grounds taken by the appellants before us to contend that a writ of or in the nature of mandamus was sought for enforcing the purported legal right of the appellant vis-à-vis the State and its officers and not an against the private persons.

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.

13. We, therefore, are of the opinion that despite the fact that the appellants had insisted upon before the High Court for issuance of a writ or in the nature of mandamus upon the State or its officers for the purpose of grant of police protection as this Court has exercised its appellate jurisdiction under Article 136 of the Constitution of India, it can and should go into that question as well, viz. as to whether the writ petitioner itself could have been entertained or not, particularly, when the appeal is a continuation of the original proceedings.

14. Learned senior counsel appearing on behalf of the respondents would moreover submit that different Benches of the High Court may take different views in regard to the interpretation of the judgments of this Court in *Most. Rev. P.M.A. Metropolitan* (supra), and in support thereof has placed before us a judgment of the learned Single Judge of the said Court in *St. George Jacobie Syrian Christian Church & Ors. v. State of Kerala & Ors.*, passed in Writ Petition (c) No.32114/2006, wherein a view different from the one taken by the Division Bench of the High Court of Kerala in the impugned judgment, has been taken. We, however, having regard to the opinion expressed

A hereinbefore and furthermore in view of the fact that, admittedly, a Letters Patent Appeal thereagainst has been filed by the aggrieved parties before the Division Bench of the Kerala High Court, do not intend to go into the said contention.

B 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.

D 16. We are making these observations, particularly in view of the fact that even a large number of persons who have filed different suits in different Courts of law were not parties before the High Court in the writ petition and thus any observation and findings of the High Court would otherwise also not be binding on them.

E 17. It must be clarified that we have expressed no opinion on the merit of the issue pending before the Civil Courts.

18. The appeals are disposed of accordingly.

19. Application for impleadment is dismissed.

R. P.

Appeals disposed of.