

(2021) 08 KL CK 0109

In the High Court Of Kerala

Case No : Criminal Miscellaneous Application Nos. 8936, 9115 Of 2019, 205, 1414, 1409, 2138, 2136 Of 2020

Cardinal Mar George Alencherry

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 12-08-2021

Acts Referred:

Constitution of India, 1950 — Article 25, 26, 214, 226
Code of Criminal Procedure, 1973 — Section 156(3), 178, 178(d), 202, 204, 219, 300, 397, 482
Indian Penal Code, 1860 — Section 34, 120 B, 406, 409, 418, 420, 423, 465, 467, 468
Transfer of Registry Rules, 1966 — Section 2
Kerala Land Conservancy Act, 1957 — Section 3, 4, 7
Code of Civil Procedure, 1908 — Section 92, 92(a), 92(b), 92(c), 92(cc), 92(1), 92(1)(d), 92(1)(f), 92(1)(g), 92(3)

Citation : (2021) 08 KL CK 0109

Hon'ble Judges : P.Somarajan, J

Bench : Single Bench

Advocate : B.Kumar, George Poonthottam, Nisha George, John Varghese, Suman Chakravarthy, George Varghese Kizhakkambalam, V.Rajendran, N.Rajesh

Final Decision : Dismissed

Judgement

P.Somarajan, J

1. A batch of seven cases have come up in relation to the alienation of properties purportedly belonging to Syro Malabar Church viz,

CrI.M.C.Nos.8936/2019, 205/2020, 1409/2020, 1414/2020, 2136/2020, 2138/2020 and 9115/2019.

2. One Joshy Varghese had filed a complaint in C.M.P.No.5003/2018 before the Judicial First Class Magistrate, Kakkanad alleging commission of

offences under Section 120 B, 406, 409, 418, 420, 423, 465, 467, 468 and 34 IPC against the Major Archbishop of Syro Malabar Church and another.

After preliminary enquiry in terms of Section 202 Cr.P.C., the Magistrate took cognizance under Annexure A2 order and issued summons to the

petitioner for the offences coming under the purview of Section 120 B, 406, 423 r/w Section 34 IPC. A revision was preferred against Annexure A2

order before the Sessions Court, Ernakulam under Section 397 Cr.P.C. in CrI.R.P.No.20/2019. The learned Sessions Judge dismissed the revision

under Annexure A3 order. It is against the aforesaid two orders and to quash the entire proceedings, the petitioner Cardinal Mar George Alencherry,

the Major Archbishop of Syro Malabar Church challenged under Section 482 Cr.P.C. in CrI.M.C.No.8936/2019.

3. CrI.M.C.Nos.205/2020, 1409/2020, 1414/2020, 2136/2020 and 2138/2020 were filed by Cardinal Mar George Alencherry with respect to the

complaints in which he is the accused. It is submitted that the first complaint at Maradu was numbered as C.M.P.No.2/2018 wherein the learned

Magistrate had directed the complainant to examine further witnesses on his behalf and this was challenged by the complainant before this court and

the same ended in dismissal. The said matter is still pending consideration before the Magistrate.

4. It is submitted that the complaint preferred by Sri. Joshy Varghese before the Judicial First Class Magistrate Court, Kakkanad, is by concealing the

earlier complaint before the Judicial First Class Magistrate Court, Maradu, in C.M.P.No.2/2018 on the same set of facts and

cause of action which is still pending consideration.

5. One Mr. Polachan Puthupara had approached the Chief Judicial Magistrate, Ernakulam, based on the very same set of facts and allegation as per

Annexure -10 complaint, which was dismissed by the Chief Judicial Magistrate, Ernakulam, on the ground that the issue involved is of civil nature by

Annexure A6 order.

6. Yet another complaint was filed before the Chief Judicial Magistrate Court, Ernakulam, in CrI.M.P. No.820/2010 by one Pappachan Varghese

predicted on the same set of facts which was referred under Section 156(3) Cr.P.C. Consequently a crime was registered. But it was referred by the

police on the ground of mistake of facts.

7. The Central Crime Branch Police, Ernakulam, launched a thorough investigation by examining 83 witnesses including the 36 persons who had

purchased various properties and concluded the investigation stating that internal rules governing the administration of diocese were duly complied with

both by their Financial Committee and Consulters Forum at each stage of transaction and a closure report Annexure A7 was submitted.

8. One Shine Varghese had approached the Central Police Station, Ernakulam, directly by filing a complaint based on the same set of allegations and

approached this court seeking a mandamus for registration of crime in which a direction was issued by this court, but it was reversed in appeal based

on which investigation was conducted and a closure report was submitted by the police.

9. The dispute pertains to the execution of various sale deeds in respect of properties held by the Syro Malabar Church, a religious congregation

allegedly without compliance of the requirements as per the byelaws of the Church causing heavy financial losses to the church and its parishioners.

Inter alia, it has been contended that all these sale deeds are the result of criminal conspiracy hatched between the petitioner in collusion with his

henchmen and the persons who had purchased the properties. He had also availed a loan of Rs.58.2 crores from South Indian Bank without initiating

any discussion or arriving at any decision as per the provisions of Canon law and the law in force.

10. The petitioner came up to quash the complaint and Annexure A2 and A3 orders mainly on the reason that, what is involved is only a civil dispute

and no criminal liability can be superimposed and that earlier a complaint had been lodged before the Judicial First Class Magistrate, Maradu and as

such, it is not permissible to file another complaint (Annexure A4) for the very same subject matter and that too, without revealing the earlier one.

11. CrI.M.C.No.9115/2019 is filed by one Saju Varghese, accused No.3 in the abovesaid case. The contentions raised are similar and analogous in

nature.

12. CrI.M.C.No.2138/2020 was filed by the Cardinal Mar George Alencherry under Section 482 Cr.P.C. to quash the order dated 13/2/2020 in

CrI.M.P.No.5015/2018 (C.C. No.94/2020 of the JFCM, Kakkanad, Ernakulam District), where the very same questions were taken up.

CrI.M.C.No.2136/2020 is against the order dated 13/2/2020 in CrI.M.P.No.5009/2018 (C.C.No.93/2020 of the same court).

CrI.M.C.No.1414/2020 is

against the order dated 20/1/2020 in Crl.M.P.No.5011/2018 of the same Court. Crl.M.C.No.1409/2020 is against the order dated 20/1/2020 in

Crl.M.P.No.5013/2018 of the same court. Crl.M.C.No.205/2020 is against the order dated 5/11/2019 in Crl.M.P.No.5005/2018 (C.C.No.1886/2019

again of the same court).

13. For the sake of convenience, Crl.M.C.No. 8936/2019 is taken as the leading case. The dispute pertains to the alienation of properties belonging to

Syro Malabar Church. It is an indubitable and undeniable fact that the Syro Malabar Church is an Episcopal Institution and not a Congregational

Institution and as such the Bishop of Archdiocese has the right to alienate and dispose of its properties subject to the restrictions imposed under their

byelaw(s). Inter alia, it was contended that even the restriction imposed under the byelaw was not complied with and the properties were alienated for

a pittance and in one case, a fraudulent device was used so as to give a veneer that the entire consideration was paid though what was actually was

barely 1/10th of the agreed amount. It was further contended that the properties held by the Syro Malabar Church through their Archdiocese Bishop,

the petitioner herein, was for the benefit of all parishioners.

14. Paragraphs 13, 16 and 17 of the complaint brought to the notice of this court in support of the argument that the complainant had full knowledge

about the properties and the number of documents executed while preferring seven separate complaints before the Judicial First Class Magistrate

Court, Kakkanad, by segregating the properties into seven for maintaining separate complaints by taking shelter under Section 219 Cr.P.C. and in

derogation of Section 178(d) Cr.P.C.

15. It is submitted that the complaint filed in the Court at Kakkanad is with respect to the allegation of sale of two properties under two sale deeds viz.

Sale Deed No.3376/2016, dated 31.10.2016 and Sale Deed No.2180/2017, dated 23.08.2017 and a second complaint based on the same set of facts

and transactions is not maintainable and took substantiation from two decisions of Supreme Court â?" Hira Lal & Others vs. State of Uttar Pradesh &

Others [2009 (11) SCC 89], Samta Naidu & another v. State of Madhya Pradesh & another [2020 (5) SCC 378,Â PramathaÂ NathÂ

TalukdarÂ v.Â SarojÂ RanjanÂ Sarkar (AIR 1962 SC 876) and Mahesh Chand v. B.Janardhan Reddy & another [(2003) 1 SCC 734]. It has

been further submitted that a second complaint really amounts to forum shopping— based on— the— decisions— of— the— Apex— Court— in

Rajiv Bhatia v. Govt. of NCT of Delhi and others [(1999) 8 SCC 525], Arathi Bandi v. Bandi Jagadrakshak Rao & others[(2013) 15 SCC 790:(2014)

5 SCC (Civ) 475], World Tanker Carrier Corporation. v. SNP Shipping Services (P)Ltd and others [(1998) 5 SCC 310], Ambica Industries v.

Commissioner of Central Excise[(2007) 6 SCC 769], Jagmohan Bahl and another v. State (NCT of Delhi) and another [(2014) 16 SCC 501:(2015) 3

SCC (Cri) 521], Udyami Evam Khadi Gramodyog Welfare Sanstha and another v. State of U.P.and others[(2008) 1 SCC 560 : (2008) 1 SCC (Civ)

359] and in Supreme Court Advocates-on-Record Association and another v. Union of India (Recusal Matter) [(2016) 5 SCC 808 : (2016) 3 SCC

(Civ) 492 : (2016) 3 SCC (Cri) 173 : (2016) 2 SCC (L& S) 253. Inter alia, it was contended that the Archbishop should be considered as the

—corporation sole— and the real owner and not a mere trustee in regard to the property of diocese, relying on the decisions of the Madras High

Court in Muthusamier and others v. Sree Sree Methanithi Swamiyar Avergal and others [(1913) SCC Online Mad 233 : AIR 1916 Mad 332 : ILR

(1915) 38 Mad 356 : (1913) 25 Mad LJ 393]. Yet another argument was also advanced that when money or property is entrusted with a person, it

would carry an implied authority making him the owner of the property and relied on the decision of the Apex Court in State of Gujarat v. Jaswantlal

Nathalal (AIR 1968 SC 700). Reliance was also placed on Urmila Devi v. Yudhvir Singh [(2013) 15 SCC 624] in support of the argument that

revisionary jurisdiction under Section 397 Cr.P.C. can be exercised when Magistrate decides to take cognizance for the offence alleged and to issue

summons under Section 204 Cr.P.C., which would be an order intermediary or quasi final in nature and not interlocutory. Mehmood Ul Rehman v.

Khazir Mohammad Tunda and Others [(2015) 12 SCC 420] and National Bank of Oman v. Barakara Abdul Aziz and another [(2013) 2 SCC 488]

were also cited regarding the application of mind by the Magistrate while taking cognizance and prima facie satisfaction, for which another decision of

the Apex Court in Chandra Deo Singh v. Prokash Chandra Bose & others[(1964) (1) SCR 639] was also quoted. The facts involved in Hiralal's case

and Samta Naidu's case (supra) are entirely different from that of the issue involved in the instant case, wherein there are different transactions with

respect to the properties situated within the jurisdiction of two courts, i.e Judicial First Class Magistrate at Maradu and Kakkanad. The mere fact that

there is a disclosure of similar transaction in consonance with the allegation levelled in a complaint with respect to certain other properties may not by

itself be a bar in maintaining an action based on a similar transaction. Section 178 Cr.P.C. is an enabling provision to try or enquire into a complaint

when the alleged offences were committed in several local areas fall under different jurisdiction and it can be enquired into and tried by the court

having jurisdiction over any of such local areas. Section 178 Cr.P.C. is not an embargo to maintain different complaints at different areas. On the

other hand, Section 219 Cr.P.C. is a restriction in trying more than three cases in one trial provided that it should be within a period of twelve months.

Necessarily, three separate cases alone can be tried together, if it is within a period of one year in single trial. A conjoint reading of Sections 219 and

178(d) Cr.P.C. would show that it is permissible to maintain different complaints with respect to separate cases spanning over one year. The cases

involved covered by the different complaints would sufficiently show that it was committed at different occasions spanning over more than one year.

The decision rendered by the Apex Court in Hiralal's case (supra) pertains to submission of a second complaint under Section 156(3) Cr.P.C. after the

culmination of earlier one which was rejected by a reasoned order, and confirmed by way of a revision. The factual and legal scenario involved in

Hiralal's case (supra) hence cannot be applied in the present case. In fact, a second complaint is not completely barred in law. The Apex Court in

Mahesh Chand v. B. Janardhan Reddy and another ((2003) 1 SCC 734) laid down the legal position that a second complaint can be

maintained only on fresh facts and/or if a special case is made out therefor, thus :-

Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely

barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without

assigning any reasons, the Magistrate under Section 204 Cr.P.C. may take cognizance of an offence and issue process if there is sufficient ground for proceeding.

As held in Pramatha Nath Talukdar Case (AIR 1962 SC 876) second complaint

could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or

where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. In the facts and circumstances of this case, the matter, therefore, should have been remitted back to the learned Magistrate for the purpose of arriving at a finding as to whether

any case for cognizance of the alleged offence had been made out or not.â??

16. The very same view was taken by another Bench of the Apex Court in *Samta Naidu's case* (supra), wherein it was held that the dismissal of a

complaint, or the discharge of the accused, is not an acquittal for the purposes of Section 300 Cr.P.C., which debars trial of a person who has been

tried by a court of competent jurisdiction for an offence and convicted or acquitted of such an offence. Section 300 Cr.P.C. has no application in the

present case and as such, though the legal position settled in tune with what is held in *Mahesh Chand's case* (supra) is standing on different pedestals

governing different areas of litigation. The bar under Section 300 Cr.P.C. comes into play only when there is culmination of trial by a competent court

resulting in acquittal or conviction.

17. There is not much dispute with respect to the fact that the Syro Malabar Church is an Episcopal Institution headed by Bishop of Archdiocese, the

petitioner herein and as such it was argued that the Bishop of the Archdiocese will have all authority over all spiritual and temporal affairs concerning

Syro Malabar Church and that they are governed by Canon law and their constitution (byelaw) even in the matter of alienation of immovable properties

and that the parishioners will not get any authority or locus standi to challenge any such alienation and transfer and cannot maintain any criminal action

pertaining to those matters and hence all the criminal complaints amount to abuse of process of the court and are liable to be quashed.

18. To resolve the abovesaid issue pertaining to the authority to deal with the property and exclusive right claimed challenging even the status of

complainant and competency to maintain complaints of this nature, it is necessary to go into the alleged authority of the Archbishop, though at the most the same would constitute either a civil wrong with its legal consequences and repercussions and there should be an understanding of what actually

amounts to spiritual and temporal matters in relation to Episcopal church and the concept of 'Government of temporalities of the church' in

relation to spiritual, ecclesiastical and temporal affairs of the church and whether the execution of the various sale deeds by the petitioner Archdiocese

Bishop would come within the ambit of either spiritual or ecclesiastical or temporal affairs of the church in relation to the Canon law and the theory of

apostolic succession of Jesus Christ. The Apex Court had considered the application of 'Canon' law in *Most Rev.P.M.A.Metropolitan and others v.*

Moran Mar Marthoma and Another (1995 Supp (4) SCC 286) and laid down as under:

'Canon is explained in Black's Law Dictionary as under :

'A law, a rule or an ordinance in general, and of the church in particular. An ecclesiastical law or statute. A rule of doctrine or discipline. A criterion or standard of judgment. A body of principles, standards, rules, or norms'.

Canon means both a norm and attribute of the scripture. The term 'Canon law' is explained in the Encyclopedia of Religion, Vol. 3, as under:

'The term canon is based on the Greek word Kanon. Originally signifying a straight rod or bar, especially one used to keep something else straight, canon came

to mean something that is fixed, a rule or a norm. The term has several applications in church usage: the canon of scripture, or that fixed list of books that are determined to belong to sacred scripture; the canon of the Mass, the fixed portion of the eucharistic prayer; the process of declaring a

deceased person to be among the fixed list of saints in heaven, or canonisation. From the third century, directives for church living and norms for church

structures and procedures have been issued as canons.

Canon law refers to the law internal to the church. In the early centuries of Christianity, canon was used for internal church norms, to distinguish them from the

imperial *nomos* (*leges* in Latin) or laws. Church norms have also been known as sacred or divine, to distinguish them from civil or human laws. At

times they are referred to as the 'sacred canons' or the 'canonical order'. The term ecclesiastical law is used synonymously with Canon law, although at times ecclesiastical law also refers to the civil law adopted in various nations to regulate church affairs. The term Canon law is used in the Roman Catholic, Anglican, and Orthodox communions.

Canon law is drawn from sources in scripture, custom and various decisions of church bodies and individual church authorities. Over the centuries these have been gathered in a variety of collections that serve as the law books for various churches.'

Canons are thus the principal scriptural bases for the religious practices observed in a Church.â??

19. Thus, there cannot be any difference of opinion with respect to application of Canon law, which is limited to religious practices

observed in a church. A Division Bench of the Apex Court in Varghese v. St. Peter's & Paul's Syrian

Orthodox Church (2017 3 KLT 261 (SC)) followed by the judgment in Most Rev. P.M.A. Metropolitan's case (supra)

had drawn a clear distinction between an Episcopal church and a Congregational church regarding the spiritual and temporal affairs and laid down the

legal position thus:

â??The essential features of congregationalism are stated to be the autonomy or independence of the individual churches or organisations, though in matters in

which the individual churches are interested as a whole and in order to enable the churches to effectively fulfil their responsibilities, they may enter into unions.

Congregationalism is stated to be the opposite of Episcopacy which means Government of the Church by the Bishops on the theory of apostolic succession. In

other words, the Bishops are supposed to be the successors of the apostles of the Christ. The congregationalists believe that every Christian has the right to

perform all functions pertaining to the priestly office and permits the laymen to celebrate sacraments whereas in Episcopal Churches only the ordained priests

can celebrate sacraments.â??

20. The Apex Court has gone through the words 'spiritual' and 'temporal' while dealing with the authority of Episcopal and Congregational

Institutions and took references from various texts such as Bhagavat Gita,

Ishopanishad etc. in reference to the application of Articles 25 and 26 of

the Constitution of India and the protection thereunder. In *Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay* [(1962) Supp (2)SCR 496] it

is held that the protection of Articles 25 and 26 is not limited to the matters of doctrine, but extends to acts done in pursuance of religion and therefore

contains a guarantee for rituals, observances and ceremonies and modes of worships, which are integral parts of religion. There is no dispute with

respect to the aforesaid proposition, but the said guarantee does not extend to appointment of Vicars/priests, deacons etc..

21. One of the questions that came up before the Apex Court in *Varghese's case* (*supra*) is whether the Malankara Orthodox Church is an Episcopal

church governed by its 1934 constitution and whether a scheme has to be framed for its management. The distinction between an Episcopal church

and Congregational church was taken into consideration and it was found that the spiritual supremacy of patriarch or apostolic succession in the

appointment of vicars/priests, deacons etc. in contravention of 1934 constitution is not permissible, but nonetheless recognized its over all supremacy.

Being an Episcopal church, it was held that Malankara Metropolitan has the prime jurisdiction regarding temporal, ecclesiastical and spiritual

administration of the church, subject to the riders provided in the 1934 constitution.

22. By relying on the legal position settled by the Supreme Court, it was submitted that the Bishop of the Archdiocese of Syro Malabar Church, who is

governed by their own constitution, the byelaw, has the right to alienate the property belonging to the church, but subject to the caveat provided in the

byelaw (its constitution). Under Section 482 Cr.P.C., this Court cannot conduct a roving enquiry with respect to disputed matters. But at the same

time, based on the admitted facts, it is within the jurisdiction of this court to go into the acts of the petitioner and whether it would *prima facie* satisfy

the commission of offence alleged in the complaint, for which, it is necessary to find out what are the powers, authorities and the rights of the Bishop

of Archdiocese over the properties held by the church and what makes the difference in the authority, if any, between Congregational and Episcopal

church in its spiritual, ecclesiastical and temporal rights in contrast with the right of alienation and transfer of immovable property, what would be the

legal position when there is provision in the bye-law or its constitution to be complied with for effecting an alienation and transfer of immovable

properties, what would be the application of Canon law in those matters and whether there is creation of implied public trust with respect to the

properties held by the church.

23. Going by the decision rendered by the Apex Court in the abovesaid two cases, it is clear that in an Episcopal church, the prime authority is vested

with the spiritual head, the Bishop of Archdiocese regarding temporal and spiritual affairs of the church and they are governed by the ecclesiastical

law viz., the Canon law to the extent of spiritual and temporal affairs of the church based on the theory of apostolic succession of Jesus Christ. When

the words "spiritual", "temporal" and "ecclesiastical" as understood by the Apex Court in the abovesaid decision are taken into

consideration, it is clear that it will not include the right to alienate the property vested in endowment. The religious supremacy vested with the Bishop

or apostolic succession should be understood confined to religious matters both temporal and spiritual governed by ecclesiastical law viz., the Canon

law.

24. The expression "temporal" shall not be misunderstood so as to include a right of alienation of an immovable property held by the church,

though its constitution provides provision for its alienation. Those clauses and provisions which would satisfy either temporal or spiritual affairs of the

church in consonance with the divine Canon law and the theory of apostolic succession alone can be considered within the supremacy of the Bishop

of an Episcopal church, governed by ecclesiastical law viz., Canon law. The other clauses included in their constitution/byelaw governing alienation of

immovable properties, will not come under either spiritual or temporal rights based on the theory of apostolic succession and hence the ecclesiastical

law-Canon law cannot be applied in derogation of the requirement of the general law, when the property held is either in endowment or in trust.

25. The user of the words "vesting in endowment with respect to property of church and not the parishioners" by the Apex Court in Most Rev.

P.M.A. Metropolitan's case (supra) while dealing with the distinction between Episcopal church and Congregational church should be understood in

relation to the religious supremacy vested on the religious head based on the

theory of apostolic succession of Jesus Christ and confined to spiritual, ecclesiastical and temporal affairs of the church. This would show that the expression "vesting in endowment" is not a vesting of property in contra distinction with that of a private person, but should be understood as the vesting of the property in endowment based on the theory of apostolic succession and would confine itself to spiritual, ecclesiastical and temporal affairs of the church. If that be so, it must be the property available with or held by the church in connection with their religious rituals, observances, ceremonies and places of worship, which would form an integral part of religious observances based on the theory of apostolic succession. This would make the legal position clear that such property cannot be alienated or transferred and even cannot be encumbered since the same forms an integral part of the religious faith and observances. Hence, "vesting in endowment" has only a limited meaning concerning holding of authority over the properties held by the Church for the purpose of religious observances and worship, which would form an integral part of the religious faith and beliefs. So there cannot be any question regarding sale or alienation of any immovable property, which is the subject of religious rituals and observances and place of worship. Necessarily, it must be understood that the right to alienate the property or transfer of property would not arise in relation to observances and worship connected with spiritual, ecclesiastical and temporal affairs of the church and the "vesting in endowment" must be understood as related to within the contours of abovesaid spiritual, ecclesiastical and temporal affairs of the church. The appellation "endowment" always tends to refer to a trust either for a public charity or a private trust. A trust and an endowment are different concepts altogether. Trust is an obligation annexed to ownership. The word 'trust' is defined in Underhill's Law of Trust and Trustees, to mean equitable obligation binding a person to deal with property, for which he has control for the benefit of persons for whom he himself may be one. The word 'endowment' defined in the Legal Thesaurus as aid, allotment, allowance, protection, assistance, award, benefit, bestowment, contribution, presentation and the like. The Apex Court in Pratapsinghji v. Desai v. Deputy Charity Commissioner, Gujarat and others (AIR 1987 SC 2064) held that endowment is dedication of property for purpose

of religion or charity having both the subject and object as certain and capable of assessment.

26. The expression "vest" must be understood in relation to a right or an interest in the property when it is secured. This would make the meaning

of the word "vesting in endowment" which would stand for securing the property for specific purpose for which it was endowed and in the case

of Episcopal church, this can only be treated as securing the property for the purpose of spiritual, ecclesiastical and temporal affairs of the church

based on the theory of apostolic succession. That does not mean that they have the right to alienate the property in derogation of the purpose for

which the property was endowed. Necessarily, the purpose of Episcopal church should and must be understood confined to the spiritual and temporal

affairs of the church based on the theory of apostolic succession and observance of religious rites. It does not include a right to alienate the property

or to use the same for any other purpose, other than the purpose based on the theory of apostolic succession, both spiritual and temporal affairs of the

church. The word "temporal" has only a limited meaning in the case of church based on theory of apostolic succession and it must be understood

as an inseparable part, an affair of the church in the administration of religious observances and spiritual affairs. In all other matters, especially in the

matter of transfer or alienation of immovable property, it would stand outside the scope of spiritual, ecclesiastical and connected temporal affairs.

27. Regarding the legal and jural status, there cannot be any separate legal or jural entity to the observances of spiritual and ecclesiastical matters

based on the theory of apostolic succession of Jesus Christ viz., the Bishop of the Archdiocese and those who follow the faith and its theory. It is

perfectly spiritual and ecclesiastical in its nature and what is vested with the Bishop of the Archdiocese based on the theory of apostolic succession is

the supremacy of faith, belief, religious observances based on the said theory and control, supervision and administration of its own affairs pertaining to

apostolic succession, faith, belief and religious observances and it would include even the appointment, control and administration of priest, deacons,

vicars and those who are involved in and are closely connected with spiritual and religious observances and maintenance, protection, upkeep of places

of worship under the said theory. It is purely spiritual and ecclesiastical concept based on the theory of apostolic succession and as such, the same is

not governed by any general law, but purely by the personal law viz., the provisions of Canon law. In so far as the other properties are concerned,

either held or possessed by the church, which is not the subject of any religious observances or places of worship based on the theory of apostolic

succession and the concept thereof, it must be understood that the possession, right, title over the properties would stand governed by the general law

and not by the Canon law, for which, a separate legal entity to the person who holds the property has to be recognized in relation to the general law

applicable. The theory of apostolic succession does not permit sale or transfer of immovable property, presumably for the reason that there cannot be

any sale or transfer of a place of worship. If any property is subjected to a sale or transfer, it would stand outside the scope of religious or spiritual

observances or a place of worship and the theory of apostolic succession and religious supremacy cannot be applied as such. Hence there would be

an implied creation of a public trust regarding the other properties which are not the subject of religious faith, belief or observances or the place of

worship for the benefit of parishioners, since a section of people would also come under the ambit of term "public". Thus, it is the nature of the

property that validates and decides the legal status of the property and the person, who is holding possession or title of the property. The Canon law or

the Constitution, which was either adopted or evolved in course of time in the administration and observance of spiritual, religious, ecclesiastical and

temporal affairs, hence cannot be applied to matters which stand outside its purview. Necessarily, those properties held in public trust would stand

amenable to Section 92 C.P.C., except clauses (a) to (c) and (cc) to sub-section (1) dealing with temporal affairs. The remaining part i.e. (d) to (h) of

Section 92(1) C.P.C. dealing with "corporeal" rights will retain its application.

28. In the case of religious endowments of a public nature, to which the Religious Endowments Act applies, a suit charging the trustee, manager,

superintendent or a member of a committee of a mosque, temple or religious establishment with misfeasance, breach of trust or neglect of duty, may

be brought under the provisions of that Act or it may be brought under the provisions of the Code as provided by Section 92 of the Code. This would

make the legal position amply clear that Section 92 C.P.C. would come into the picture in the absence of a parallel provision covered by any

Endowment Act. The Canon law being the law pertaining to spiritual and ecclesiastical matters cannot be supplanted in place of an endowment

legislation so as to exclude the application of Section 92 C.P.C. or in substitution of that section. It is so unfortunate that no endowment legislation so

far enacted to address the various issues connected with the legal status of church authorities in so far as the properties which are held not as part of

their religious belief, faith or observances and to even address the legal status of a charitable institution run by the church authorities.

29. By taking support from the decision of the Constitution Bench of the Apex Court in *Chairman Madappa v. M.N.Mahanthadevaru and others*

[(1966) 2 SCR 151 : AIR 1966 SC 878], it was argued that Section 92 C.P.C. is an enabling provision and not a compulsory requirement for

effectuating any sale or transfer of property held in trust. What was considered and held by the Apex Court regarding the application of clause (f) to

Section 92(1) C.P.C. are the practical difficulties that may be encountered, if it is strictly complied with in the management of trust and its

requirements and it was held that when there is no prohibition to sell, mortgage or exchange it in the trust deed relating to a public trust, it will not

circumscribe the powers of trustees to carry on ordinary administration of trust property and to deal with it in such manner as they think best for the

benefit of the trust. But there may be other situations where it might be necessary to alienate trust property which may require sanction of the court

under clause (f) of Section 92(1) C.P.C.. But in the instant case, even the petitioner has no case that they themselves constitute a trust of public

nature or religious nature. On the other hand, the firm stand taken by the petitioner is that being the spiritual head, he is bound by Canon law alone and

not the general law with respect to right of alienation or transfer of immovable properties held by the church. But as adumbrated above, the properties

which were held in trust by the church for the parishioners would constitute a public trust, for which there is no written trust deed or any specific

understanding to that effect except their constitution and the provisions contained in the Canon law. Interestingly, in their constitution (byelaw), nothing

has been mentioned or recognized regarding any trust presumably for the reason that it was codified only for the purpose of meeting the spiritual,

ecclesiastical and temporal affairs of the church and not to deal with any public trust or trust property. There is no provision anywhere in the byelaw

authorising or empowering any person to hold any property in trust. In the instant case, since there is no written constitution dealing with affairs of public trust or trustees, but only presupposes albeit tangentially an implied public trust, without conferring any authority to any particular person either as a trustee or otherwise, the legal position settled by the Constitution Bench of the Apex Court in *Chairman Madappa v. M.N. Mahanthadevaru and others* [(1966) 2 SCR 151 : AIR 1966 SC 878] cannot be applied, firstly on the reason that all these sale deeds were executed deviating from the scope and purpose of the Episcopal church by ostensibly establishing a Medical College Hospital with the objective of a charitable intent. Secondly on the ground that there is no written trust deed either appointing or authorising any particular person as trustee or recognizing its powers and authorities over its assets.

30. The right to alienate the property shall not be allowed to be misconstrued as the authority or be regarded as an offshoot of the right to hold, possess and administer the property. The expression 'temporal' may include the authority to hold, possess and administer the property, but not to alienate the same. The expression 'corporeal' must be understood in relation to 'temporal' and 'spiritual' right in contra. The word 'corporeal' stands for 'that can be touched, physical, rather than spiritual' (Oxford Advanced Learner's Dictionary).

31. The word 'corporeal', 'corporal hereditament' and corporeal property are defined in P. Ramanatha Aiyar's Advanced Law Lexicon 4th edition as follows:

'corporeal' - Things which may be seen and touched; material (as) corporeal hereditaments CORPOREAL distinguished from CORPORAL. Corporeal means possessing a body, that is tangible, physical, material; corporeal means relating to or affecting a body that is bodily external. Corporeal denotes the nature or physical existence of a body, corporeal denotes its exterior or the coordination of it with some other. Hence we speak of 'corporeal hereditaments' but of corporal punishment.

Corporal hereditaments "consists whole or substantial and permanent objects, all which may be comprehended under the general denomination of land only.

Corporeal hereditament : A material object in contrast to a right. It may include land, buildings, mineral, trees or fixtures.

Corporeal property : such as affects the senses, and may be seen and handled as opposed to incorporeal property, which cannot be seen or handled and exist only in contemplation. Thus a house is corporeal, but the annual rent payable for its occupation is incorporeal. Corporeal property is, if movable, capable of manual transfer: immovable, possession of it may be delivered up. But incorporeal property cannot be so transferred, but some other means must be adopted for its transfer, of which the most usual is an instrument in writing.

Property which has a physical existence, such as land or goods.â??

32. The right to transfer a property asseverated by the church has not come up for consideration before the Apex Court in Varghese v. St.Peter's &

Paul's Syrian Orthodox Church (2017 3 KLT 261 (SC)) and in Most Rev.P.M.A.Metropolitan and others v. Moran Mar Marthoma and Another (1995

Supp (4) SCC 286). In that case, though the Apex Court upheld Malankara Orthodox Church as an Episcopal church, nothing was mentioned

suggesting an exclusion of the application of Section 92 C.P.C. and the relief of settling a scheme was not granted as there was sufficient provision in

their 1934 constitution for the proper administration. That does not however imply that Section 92 C.P.C. stands excluded.

33. There cannot be any tinkering of the constitution or byelaw regarding any public, charitable or religious trust either constructive or express in

substitution of clause (d) to (g) of sub-section (1) of Section 92 C.P.C., unless the institution is excluded by the reason of its character as an

endowment covered by other parallel legislations viz. various Endowment Acts. The observation made by the Apex court in Varghese's case (supra)

has to be considered so as to have a better understanding of the scope and impact of Section 92 C.P.C. even in the case of Episcopal institutions. The

relevant portions of the judgment run as follows:

â??FRAMING OF SCHEME UNDER SECTION 92 OF THE CIVIL PROCEDURE CODE

We are also not impressed by the submission that the court should direct framing of a scheme under S.92 CPC in view of the decision of the Privy Council in

Mohd. Ismile Ariff v. Ahmed Moolla Dowood (43 IA 127 (PC)) in which it has been held that the court has the power to give direction and lay down rules that

may facilitate the work of management and the appointment of trustees in the future. The primary duty of the Court is to consider the interest of the general body

of the public for whose benefit the trust is created. Reliance has been placed by Shri S.Divan, learned senior counsel on Acharya Shri Shreepati Prasadji Barot

Laxmidas 33 CWN 352 (PC) that the institutional trust must be respected by the sect and the body of worshippers for whose benefit it was set up to have the

protection of the court against their property being subject to abuse speculation and waste. Reliance was also placed on Ram Dularey v. Ram Lal (AIR 1946 PC

34) in which it has been laid down thus:

“Even if there were an inconsistency in that judgment, their Lordships would be very slow to disturb the safeguards which are provided in that scheme, if

their Lordships found it necessary to reconsider the scheme:but in their view the scheme has been definitely approved by the Chief Court and they see no reason

for interfering with the judgment. It has to be remembered that in these cases the Court has a duty, once it finds that it is a trust for public purposes to consider

what is best in the interests of the public. That is made abundantly clear by the judgment of this Board, delivered by Mr.Ameer Ali, in Mahomed Ismail Ariff and

others v. Ahmed MoollaDawood and another (43 IA 127: 43 Cal.1085: 4 LW 269 (P.C.)”

In our opinion there is no necessity of framing any scheme under S.92. There are adequate provisions and safeguards provided in S.92 for managing the

Malankara Church and its properties. There is no dispute with the proposition laid down in the aforesaid decisions but we find no such necessity for framing such

scheme under S.92 CPC in view of detailed wholesome provisions of 1934 Constitution.”

34. Even going through the constitution of the Syro Malabar Church, it is clear that it evolved, gained acceptance and was adopted canonically. It is

evident from the preamble attached to their constitution. The sources of the present code are stated to be many and

varied and there is ample recognition to “yogam” in its triadic forms “potuyogam, desiyayogam and edavakayogam as the system of

administration in Section 2 of its preamble, which would prima facie satisfy the existence of a system of administration in its triadic form of three

yogams apart from the theory of apostolic succession, which manifests existence of an implied trust within the congregation presumably for managing

and dealing with “corporeal right” attached. The only provision remotely connected with the right to alienate or transfer any immovable property is

included in title XIV of Article 214, which is a restriction imposed and not with respect to any "authority" given to any of its apostolic custodians

in the hierarchy. Article 214 is extracted below for reference:

"Article 214. Alienation of property exceeding an amount of Rupees ten lakhs/ one million (Rs.10,00,000) up to twenty-five crores/two hundred and fifty

million (Rs.25,00,00,000) is to be done only with the consent of the finance council and the college of eparchial consultors. Alienation of property that exceeds

an amount of Rupees twenty-five crores/two hundred and fifty million (Rs.25,00,00,000) upto fifty crores Â (Rs.50,00,00,000) needs the consent of the major

archbishop who in turn needs the consent of the permanent synod. Alienation of property above Rupees fifty crores (Rs.50,00,00,000) can be done only with the

consent of major archbishop who in turn needs the consent of the synod of bishops."

35. A mere perusal of Article 214 would clearly show that it is an additional requirement to be complied with for effectuating a valid sale or transfer of

immovable property. No where it is stated with whom the ownership or title of immovable property would exclusively vest with, presumably for the

simple reason that they are bound by the general law regarding "corporeal" rights.

36. Establishment of a Medical College or any educational institution though falling under the broad spectrum of charity does not by itself qualify for

any

diversion of funds or property for establishing a charitable institution without satisfaction of conditions enumerated in Section 92(3)C.P.C., which are

extracted below for reference:

"(a) where the original purposes of the trust, in whole or in part -

Â (i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such

instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property

applicable for similar purposes can be more effectively used in conjunction with, and to

that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes;

or

(e) where the original purposes, in whole or

in part, have, since they were laid down -

(I) been adequately provided for by other means, or

(II) ceased, as being useless or harmful to the community, or

(III) ceased to be, in law, charitable, or

(IV) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.â??

37. The abovesaid requirement has to be satisfied so as to divert any fund or property for establishing or maintaining any educational institution or

charitable organization deviating from the purpose for which the church was consecrated. This question had never come up before the Apex Court

either in Most Rev.P.M.A.Metropolitan's case, in Varghese's case or in Chairman, Madappa's case (supra). Hence, the requirement to be complied

with under Section 92(3) C.P.C. is independent in its nature, though it was incorporated by way of sub-section(3) and cannot be avoided.

38. This Court in Major Archbishop Angamaly and Others v. P.A.Lalan Tharakan and Others(2016(3) KHC 359 = 2016(2) KLT 791)

has not gone into the question of creation of a public religious trust or endowment, but has only considered the relevant aspect of spiritual and temporal affairs among the Roman Catholics. The decision arrived at by the Madras High Court in Muthusamier and others v. Sree Sree Methanithi Swamiyar

Avergal and others [(1913) SCC Online Mad 233 : AIR 1916 Mad 332 : ILR (1915) 38 Mad 356 : (1913) 25 Mad LJ 393] is not applicable in the

instant case as what was considered in that decision is with respect to the the properties belonging to an English Bishop (a corporation sole

under the English Law) including his savings from the revenue of the benefic,

devolve upon his legal representatives or heirsâ? and not with respect to the property held by the church.

39. Hence, the petitioner, who has sold the property without the compliance of Section 92 and 92(3) C.P.C. cannot seek shelter under the umbrella of their constitution (byelaw) or the provisions contained in the Canon law. The various sale deeds executed unilaterally and arbitrarily transgressing Section 92 and 92(3) C.P.C. would render his stand invalid and untenable at the option of any of the parishioners to whom no notice was given and no consent was obtained, since the property sold is not a property of place of worship or religious or spiritual observances. There is a clear breach of trust by the petitioner in the execution of sale deeds in favour of various persons. The persons, who had purchased the property, cannot take sanctuary pleading ignorance of law when they had opted to purchase the said property.

40. The criminal conspiracy between the petitioner in connivance with the cohorts and those who purchased the property further becomes more starkly evident from the fact that there is no semblance of any transparency in the alleged sales, though pertains to the property of church. The sale deeds were executed without conducting a public auction or public sale with notice to all concerned including the parishioners and those intending to purchase the property and thereby curtailed the right to derive maximum consideration for the coffers of the church solely for the purpose of giving the property to certain selected persons at a throw away price capriciously and at the whims and fancies of the petitioner. This court can take judicial notice with respect to the prevailing land value and market value of prime lands of vantage points having road frontage and national highway direct access. This would certainly show the extent of criminal conspiracy hatched with the purchasers of the property.

41. Yet another fact was also brought to the notice of this court so as to show the criminal conspiracy in one particular sale deed (No.3373/1/2016 Annexure A1 in CrI.M.C.No.8936/2019) wherein the entire consideration of Rs.3,99,70,000/- (Rupees Three Crores Ninety Nine Lakhs Seventy thousand) stated to be received by virtue of transfer through a bank account, but no such consideration was passed or tendered on the date of execution and registration of the said sale deed. But the amounts were given in piecemeal, that too, when it was taken up by the complainant.

42. Another interesting fact also came to the notice of this court with respect to the property obtained under a settlement No.4950 dated

21.9.2007(Annexure A1 in CrI.M.C.No.8936/2019). The settlement deed is seen executed by a Religious Congregation of Brothers of the Roman

Catholic Community, Erattumugham P.O., Munnoorpilly Kara, Karukutty village, Aluva Taluk, represented by its duly constituted Power of Attorney

Holder, Fr.Sebastian Vadakumpadan, as per General Power of Attorney registered as No.177 of 2006 in Book IV Volume 132 at pages 21 and 22 of

the Sreemoolanagaram Sub Registry. It seems to be strange and unfortunately odd that the document of acquisition of title over the property has not

been mentioned or even hinted anywhere in the document and was kept in total darkness. On the other hand, they have given a declaration that the

property is free from all encumbrances and liabilities and the settler has full and absolute title and possession of the property without divulging the

acquisition of right, title or interest over the property. A title or ownership over a property can be obtained either (1) by voluntary action of the owners

(2) by virtue of decrees of civil court or by revenue sales or (3) by succession. The very same requirement is mentioned under Section 2 of Transfer

of Registry Rules, 1966 for effecting transfer of title in revenue Registry. But nothing has been mentioned in the settlement deed of the year 2007,

how the settler/executant acquired title or ownership over the property either by means of a decree of court or voluntary action of its owners such as

sale, gift, settlement, will etc. or by succession. A declaration to the effect that they have full absolute title and possession over the property is not

sufficient to create any title or ownership of the property. Suppression of material facts regarding the title and interest over the property hence looms

large and causes a reasonable doubt whether it is a property owned by the public or the Government or it is a puramboke land or a no-man's land. It

raises a reasonable doubt as to whether it is the property of Government or a puramboke land and whether the said settlement deed was created with

the aim to manipulate a document of title over the Government land. If it is a property owned by the public at large or the government or a puramboke

land, it would cause very serious legal repercussions especially, when there are provisions in the Land Conservancy Act. All the sale deeds were

executed by the petitioner based on a self declared title under the abovesaid settlement deed without disclosing how right, title or interest over the

property has been acquired. Even during the course of argument, the learned Senior Counsel for the petitioner Sri. George

Poonthottam even went to the extent of advancing an argument that it was not the property belonged to

the settler. There would arise yet another doubt whether the said religious congregation is within the religious

supremacy of the petitioner - Major Archbishop and the legal fiction in the execution of a settlement deed

in his favour, when the property is otherwise vested in him, based on the apostolic succession or

held by him in trust. In the document, the legal status of settler has not been mentioned. It is not mentioned anywhere in the document

whether the property was mutated in the name of the executant of that document and whether they were paying basic tax in respect of the

property. In short, the settlement deed No.4950 dated 21/09/2007 a prima facie appears to be

executed to perpetuate encroachment over the Government or puramboke land and to manipulate title over it. It is

also not permissible to accord sanctity to the encroachment by assigning re-survey number in the name of the encroacher. 43.

It is quite impermissible and illegitimate to convert a property of State Government or puramboke land or public land to a private

property based on possession during the course of re-survey. Earlier, this court in Cheriyanad Grama Panchayath v. State of Kerala and Others (2019

(5) KHC 699) had gone into the said question and the power of re-survey authorities to re-fix or fix any boundary of landed property based on

possession and settled the legal position as follows:

“It is neither permissible nor advisable for the resurvey authorities to re-fix the boundary line of particular survey under the guise of resurvey based on

possession. No such power can be vested with the resurvey authority and hence what is done by them by re-fixing the boundary based on possession can only be

considered as without any authority or exceeding the authority vested with them. The resurvey authority cannot exercise the jurisdiction of a Civil Court to fix

any boundary based on possession. The possession is really a matter to be decided by a Civil Court. The power vested with the survey authority under Section 9

and Section 10 of the Act is relating to record an undisputed boundary or to determine any dispute of boundary with reasons.â??

44. Hence it requires a proper and detailed enquiry by the State Government and the investigating agencies thereunder and this court cannot shut its

eyes to the abovesaid facts, which could even be the tip of an iceberg. Special mention is required at this juncture to Section 7 of the Land

Conservancy Act dealing with punishment for unauthorisedly occupying the property of the Government, which is extracted below:

â??7. Punishment for unauthorisedly occupying land which is the property of Government.â?" Notwithstanding anything contained in this Act,â?

(a) whoever with the intention of using or holding any land which is the property of Government, whether poramboke or not, for any non-Governmental purpose,

unlawfully enters or occupies such land shall be punishable with imprisonment of either description for a term which shall not be less than three years but which

may extend to five years and shall also be liable to pay a fine which shall not be less than fifty thousand rupees, but which may extend to two lakhs rupees:

Provided that a person who is occupying any Government land not exceeding 5 cents as on the date of commencement of this Act and is not having any other land

in his name or in the name of his family members and is having any of the following documents in order to prove that he was residing therein, namely, record of

rights or a ration card or an electoral identity card issued in the address of such Government land which he is so occupying or a proceeding assigning house

number to a building in such property or an electric connection or a water connection, issued by the competent authorities of the Government or the Local Self

Government Institutions or the respective statutory bodies, as the case may be, shall not be considered as an unlawful occupant for the purpose of imposing

punishment;

(b) whoever, for the purpose of effecting transfer of any land which is the property of Government for consideration or otherwiseâ?

(i) commitsÂ theÂ offenceÂ ofÂ cheatingÂ by fraudulently or dishonestly creating documents ; or

(ii) makes or creates any forged document in support of any claim or title to such land shall be punishable with imprisonment of either description for a term

which shall not be less than five years but which may extend to seven years and shall also be liable to pay a fine which shall not be less than fifty thousand rupees,

but which may extend to two lakhs rupees ;

(c) Whoever being an officer entrusted with the responsibility of reporting unlawful occupation of land which is the property of Government or of initiating action

to remove such unauthorised occupation fails to report or to initiate action to remove such unlawful occupation, shall be punishable with imprisonment of either

description for a term which shall not be less than three years but which may extend to five years and shall also be liable to pay a fine which shall not be less than

fifty thousand rupees, but which may extend to two lakhs rupees;

(d) Whoever erects or causes to erect any wall, fence or building or puts up or causes to put up any overhanging structure or projection, whether on a temporary

or permanent basis in contravention of sub-section (2) of section 5, shall be punishable with imprisonment of either description for a term which shall not be less

than one year but which may extend to two years and shall also be liable to pay a fine which shall not be less than ten thousand rupees, but which may extend to

twenty five thousand rupees and in the case of a continuing contravention, such additional fine which may extend to five hundred rupees for each day during

which the contravention continues after conviction for the first such contravention.â??

(emphasis supplied)

45. The earlier provision before its amendment by Act 29 of 2009 w.e.f 08/11/2008 is as follows:

â??7. Punishment for unauthorisdely occupying land which is the property of Government (1) Whoever occupies a land which is the property of Government,

whether a poramboke or not,contrary to section 5 shall be liable to pay-

(a) such fine not exceeding two hundred rupees; and

(b) in the case of a continuing contravention such additional fine not exceeding two hundred rupees for every day during which such contravention continues

after fine has been imposed for the first such contravention as may be imposed by the Collector:

Provided that a person unauthorisedly occupying a land which is available for assignment under the Kerala Government Land Assignment Act, 1960, shall not be

liable to pay any fine under sub-section

(1) if-

(i) he is eligible under the rules made under that Act for assignment of such land without auction; and

(ii) he applies under those rules for the assignment of such land in his favour, either on registry or on lease.

(2) Without prejudice to any liability under sub-section(1), any person who erects or causes to erect any wall,fence or building or puts up or causes to put up any

overhanging structure or projection (whether on a temporary or permanent basis) in contravention of sub-section(2) of section 5 shall be liable, on conviction by

a magistrate, to be punished with fine which may extent to two hundred rupees and in the case of a continuing contravention, with an additional fine which may

extent to two hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

Explanationâ?" A tenant unauthorisedly holding over after the expiry of his term of lease is liable to a fine under this section.â??"

(emphasis supplied)

46. To sum up, going by the earlier provision, it would appear that anyone can encroach the Government land at the risk of Rs.200/-. This would prima

facie show the lack of proper protective measure by way of legislation against encroachment over Government land. Only by way of Act 29 of 2009,

stringent provisions were incorporated under Section 7 to deal with unauthorised occupants over the Government land.

47. It was submitted that the above question regarding nature of the property, whether it is a Government land or not is not within the scope of this

court under Section 482 Cr.P.C. and at the most it would come under the purview of Article 226 of the Constitution. I am afraid Section 482 Cr.P.C.

though incorporated under Code of Criminal Procedure, by its nature is an independent provision dealing with the inherent power of the High Court

within the three contours of that section namely, to give effect to any order under the Code or to prevent abuse of the process of any Court or

otherwise to secure the ends of justice. When a glaring illegality has come to the notice, it would be remiss on the part of court to remain a silent

spectator simply because nobody has raised the manipulation by initiating legal proceedings and this court can exercise the plenary powers under

Section 482 Cr.P.C., lest it would perpetuate an illegality. The scope of Section 482 Cr.P.C. in that behalf was taken up and settled by the High Court

of Rajasthan in *Likhama Ram v. State of Rajasthan* [1998 Cr LJ 2635 (Raj)]. The Apex Court in *Popular Muthiah v. State of* represented by Inspector

of Police (2006(6) SCALE 417) had settled the legal position that the power under Section 482 Cr.P.C. can be exercised even suo motu in the interest

of justice, for which no formal application is required. It acts 'ex debito justitiae'. It can, thus, do real and substantial justice for which alone it exists. It

is true that no one came up with any such allegation either under Article 226 of the Constitution or otherwise pertaining to large scale encroachment

over the Government land by organized encroachers. Even proper protective measures were not taken by way of legislation prior to the amendment of

Land Conservancy Act.

48. If it is pertaining to the Government property as defined under Section 3 or a puramboke land as defined under Section 4 of the Act, necessarily,

the offence of cheating and creation of forged document made mentioned in clause (b) of Section 7 would come into effect, besides the offence under

the said section as against the officers, who failed to report unlawful occupation of land. The non-mention of title or interest, or its acquisition or

document of acquisition of title or interest over the property covered by the said document raises a reasonable doubt as to the nature of the property

and hence the inherent power under Section 482 Cr.P.C. can be exercised to secure the ends of justice, when it is not dealt with under the provisions

of the law by the Government or the competent authority thereof. Hence, it is ordered that the Government shall conduct an investigation into the

matter through its investigating agencies so as to satisfy itself whether the settlement deed of the year 2007 was executed with respect to any

Government land or puramboke land and whether it was a Government land or a puramboke land at any point of time and also the non-action/inaction

on the part of the concerned officials, who are bound by the provisions of law including Land Conservancy Act, for which, a team of officers

possessing adequate knowledge in the Civil and Criminal Laws has to be selected.

49. From the discussion, the Criminal Miscellaneous Cases filed by the petitioners under Section 482 Cr.P.C. deserve only dismissal.

All the Crl.M.Cs. are dismissed with the abovesaid directions to the first respondent-State Government. For compliance report, post on 25/10/2021.