

(2009) 10 MAD CK 0064

In the Madras High Court

Case No : Writ Petition No. 14813 of 2009

Pastor John Ponnaiah, The elected Secretary Madras
Pentecostal Assembly A registered society bearing
Registration No. 5/1934-35

APPELLANT

Vs

The Assistant Commissioner of Police, Deputy Registrar of
Societies, The District Registrar of Societies and Stanley Vasu

RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 136

Citation : (2009) 8 MLJ 1597

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

**Advocate : V. Shanmugham, for the Appellant; R. Neelakantan, G.A. for R1 to
R3 and N.D. Bahety, for R4, for the Respondent**

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner claiming to be the elected office bearer of the Madras Pentecostal Assembly, which is a registered Society

under the Tamil Nadu Societies Registration Act has filed the present writ petition, seeking for a direction to the first respondent (Assistant

Commissioner of Police, Chennai 14) to take action on the representation of the petitioner dated 14.10.2008 forthwith and pass appropriate

orders. In his representation, the petitioner sought for handing over the Management of the Society, namely, the Madras Pentecostal Assembly,

having its office at Thandavarayan Street, Royapettah, Chennai -14 to the elected committee of the Society by the fourth respondent.

2. Notice was ordered to the respondents. The fourth respondent has entered

appearance and has also filed a counter affidavit dated 27.10.2009.

3. It is the case of the petitioner that the petitioner's Society was registered as early as in the year 1934 and it is governed by the by-laws of the

Society. The fourth respondent's father was elected as the Superintending Pastor. Subsequently, he died on 03.03.1995. After the death of his

father, a meeting of the Society was convened and the fourth respondent himself declared elected as the President of the Society.

4. The writ petitioner along with three other members of the Society filed a suit before the II Assistant City Civil Court being O.S. No. 5307 of

1996 to declare that the election of the fourth respondent as the President of the Society as well as the meeting of the Board of Trustees held on

11.03.1995 as null and void. The Civil Court by its judgment and decree dated 25.11.2005 decreed the suit in favour of the petitioners. It is

admitted that the said suit was taken on appeal by the fourth respondent in A.S. No. 293 of 2006 and it is pending before the I Additional City

Civil Court. It is also claimed that no interim order was passed by the lower appellate court.

5. It is stated by the petitioner that subsequent to the suit, elections were held for the said Society and that is not under challenge. But

notwithstanding the fact that the fourth respondent has no right to keep in possession of all the records and the management of the Society and that

he has been holding the properties of the Society illegally, had necessitated the petitioner to complain to the authorities including Registration

Department. It is further stated by the petitioner that the third respondent District Registrar of Societies by a proceedings dated 28.08.2007 held

that the petitioner was the declared office bearer in terms of Form VII registered with the Registrar and therefore, all records and documents must

be handed over to the Executive Committee selected by the general body on 18.08.2007. It is also stated that the petitioner sent a representation

to the first respondent dated 14.10.2008 claiming that the fourth respondent had locked the premises and not handed over the documents and the

management of the Society and hence, they wanted sufficient police protection from being attacked by any anti-social elements set up by the fourth

respondent.

6. The fourth respondent resisting the prayer made by the petitioner in the

counter affidavit stated that the petitioner's election was not declared as final by the department. On the contrary, the Inspector General of Registration, by his orders dated 18.09.2007 and 16.04.2009 had taken an opposite view. Therefore, the petitioner claiming himself to be an elected body is not recognised by him. It is also stated that the petitioner had not disclosed all the correspondences and has produced only selected correspondence before this Court. It is also stated that first respondent has no jurisdiction to interfere with the affairs of the Society and the writ petition itself is not maintainable.

7. It is further claimed that the issues raised herein were all subject matter of civil suits before the City Civil Court being O.S. No. 5307 of 1996, O.S. No. 3304 of 1997 and O.S. No. 2932 of 1998. While the last two suits were dismissed, the first suit as stated already is pending in appeal.

8. It is under these circumstances, the claim made by the petitioner will have to be considered.

9. Mr. V. Shanmugam, learned Counsel for the petitioner submitted that when the petitioner has been the lawfully elected as office bearer of the Society, there is no justification for the fourth respondent to retain the records and prevent the petitioner from functioning. With reference to his request for police protection, the learned Counsel placed reliance upon the judgment of the Supreme Court in *Howrah Mills Co. Ltd. and Another Vs. Md. Shamin and Others*, and submitted that a writ of mandamus directing the State and its police authorities to give necessary protection in respect of the properties is also available. This Court is unable to accept the said argument.

10. The said judgment of the Supreme Court arose on a different context. A Jute Mill was brought under BFIR and a custodian was appointed.

During the custody by the custodian, lot of materials were being stolen and loss properties. It is in that context, the police protection was sought for. But the Police demanded costs to be paid. While considering the relief claimed by a sick Jute Mill, the Supreme Court directed requisite protection in respect of the properties of the company should be given so that the company can repair or raise its compound wall and for construction of a separate boundary wall for the plot of land proposed to be sold under the supervision of BIFR. It is not clear as to how this

judgment has any relevance to the case projected by the petitioner.

11. On the contrary, the following passage found in Paragraph 13 of the judgement cited supra will show that the relief claimed by the petitioner

cannot be granted. Paragraph 13 reads as follows:

13. Mr. Roy, learned Counsel for the State has categorically submitted before us that the State would perform its duties in the matter of

maintenance of law and order and it shall provide protection to the property of the first appellant Company in discharge of the statutory duties of

the State and the police. In this context, the authorities may consider whether it is necessary to engage a large force of policemen at this stage and

consider posting only such number of personnel as may be found necessary for the protection of the property. That would enable a reduction in the

cost of protection to be paid by the appellants and the State would be free to reduce the charges payable by the appellants for protection of the

properties. In the light of the directions as above and the observations, IAs Nos. 4 and 5 of 2006 will stand disposed of.

12. The learned Counsel for the petitioner also placed relied upon the judgment of the Supreme Court in P.R. Murlidharan and Others Vs. Swami

Dharmananda Theertha Padar and Others, . He submitted that in a given case, a person may be entitled to police protection having regard to the

threat perception to his life and liberty or for protection of rights declared by a decree or order passed by a civil court, and if the Court is satisfied

that the authorities have failed to perform their duties.

13. In the very same judgment, in paragraph 11 it was observed as follows:

11. The question is a contentious one. Construction of the said trust and the rights and obligations thereunder were in question. The first respondent

filed a suit in that behalf. The said suit was dismissed. In terms of Order 9 Rule 9 of the CPC another suit would not be maintainable at his instance.

We have noticed hereinbefore that another suit being OS No. 30 of 2002 is pending in the Court of Munsif. The High Court, despite noticing the

said fact, sought to usurp the jurisdiction of the civil court. It, as noticed hereinbefore, determined the contentious issues which were required to be

proved in terms of the provisions of the Evidence Act.

14. The learned Counsel submitted that only when there is a disputed question of fact, the question of declining relief by the self imposed restriction

under Article 226 may arise. In the present case there is no dispute with reference to the facts of the case. Though this argument sounds attractive,

in the very same judgment, Justice P.K. Balasubramanyan in his concurring opinion in paragraph 19 observed as follows:

19. A writ for ""police protection"" so-called, has only a limited scope, as, when the court is approached for protection of rights declared by a

decree or by an order passed by a civil court. It cannot be extended to cases where rights have not been determined either finally by the civil court

or, at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order.

15. Per contra, Mr. N.D. Bahety, learned Counsel appearing for the fourth respondent brought to the notice of this Court the judgment of the

Supreme Court in Moran M. Baselios Marthoma Mathews II and Others Vs. State of Kerala and Others, . In the said judgment, the Supreme

Court referred to P.R. Murlidharan's case and in Paragraphs 12,13 and 15 had observed as follows:

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 petition itself could have

been entertained or not, particularly, when the appeal is a continuation of the original proceedings.

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 open.

16. Apart from these facts, it must also be noted that the Registrar of Societies cannot adjudicate the rights of parties even in case of election of

members in a Society. It has been held by a Full Bench of this Court that a Registrar's power to record Form VII is not final. If there is any

dispute with reference to the contents of Form VII, the parties will have to move the Civil court and that the Registrar under the Societies

Registration Act has no power to adjudicate the rights of parties vide its judgment in C.M.S. Evangelical Suvi David Memorial Higher Secondary

School Committee Karisal Vs. The District Registrar and Others,

17. If it is seen in the above factual matrix and the legal precedents, the relief sought for by the petitioner that too only on the basis of a letter by the

District Registrar, directing the existing office bearers to hand over the records to the newly elected officer bearers cannot be countenanced by this

Court. That order of the District Registrar cannot be raised to the level of a decree by a civil court. Even assuming that there was a decree of a civil

court as laid down in P.R. Murlidharan's case (cited supra), it is for the parties to execute such a decree in the manner known to law. It is one

thing to say that a Civil court has got power u/s 151 CPC to order police protection, but it is other thing to say that having obtained a civil court's

decree, this Court under Article 226 must order police protection for executing the civil court's decree.

18. The contention of the learned Counsel for the petitioner that ultimately whether it is Section 151 CPC or Article 226 of the Constitution, only

this Court will be granting such direction and that it was immaterial under which wing of this Court the petitioner had approached. This argument

though may sound attractive, but this Court is not inclined to accept the same. If the Civil Court is seized of the matter, it is for the parties to

approach the Civil Court including execution of its order. This Court, by exercising extraordinary jurisdiction under Article 226 of the Constitution

of India cannot order police protection without there being any justification in

favour of the petitioner.

19. In the light of the above, the writ petition stands dismissed. No costs. Mr. V. Shanmugam, learned Counsel for the petitioner stated that the

fourth respondent is indulging in very many criminal activities and therefore, the dismissal of the writ petition should not stand in the way of seeking

relief by filing appropriate criminal complaint. It is suffice to state that any observation made in this writ petition will not stand in the way of the

petitioner invoking jurisdiction of other fora available under law.