

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.HRISHIKESH ROY

&

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 29TH DAY OF JULY 2019 / 7TH SRAVANA, 1941

WP(C).No.20144 of 2019

PETITIONER:

ANOOP.M.S
AGED 38 YEARS
S/O SUKUMARAN MANELIL HOUSE, VALAYANCHIRANGARA
P.O.PERUMBAVOOR.

BY ADV. SRI.LEGITH T.KOTTAKKAL

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 UNION OF INDIA,
REPRESENTED BY SECRETARY, MINISTRY OF MINORITY
AFFAIRS, 11TH FLOOR, PT. DEENDAYAL ANTYODAYA BHAWAN,
CGO COMPLEX, LODHI ROAD, NEW DELHI-110003.
- 3 CONFERENCE OF CATHOLIC BISHOPS OF IDNA (CCBI)-LATIN
CHURCH,
CCBI CENTRE, POST BOX NO 8490, HUTCHINS ROAD, 2ND
CROSS BANGALORE-560 084, REPRESENTED BY ITS PRESIDENT
MOST REV. FILIPE NERI FERRAO
- 4 SYRO-MALABAR BISHOPS SYNOD (SMBS)
THE SYRO MALABAR CHURCH, ARCH BISHOPS HOUSE,
BROADWAY, ERNAKULAM-682 031, REPRESENTED BY SYRO-
MALABAR CHURCH MAJOR ARCH BISHOP MAR GEORGE
ALENCHERY.

W.P(C) No.20144/19

:2:

- 5 HOLY EPISCOPAL SYNOD-SYRO-MALANKARA CHURCH,
MAJOR ARCHIEPISCOPAL CURIA, CATHOLICATE CENTRE,
TRIVANDRUM-695 004, REPRESENTED BY THE PRESIDENT OF
THE HOLY EPISCOPAL SYNOD MORAN MOR BASELIOS
CARDINAL CLEEMIS CATHOLICOS.
- 6 CATHOLIC BISHOPS CONFERENCE OF INDIA,
CBCI CENTRE 1 , ASHOK PLACE NEAR GOLE DAKKHANA, NEW
DELHI-110001, REPRESENTED BY ITS PRESIDENT OSWALD
CARDINAL GRACIAS.

BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA

OTHER PRESENT:

SRI. K.V.SOHAN, STATE ATTORNEY AND SRI. SUVIN R.
MENON, CGC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.07.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Hrishikesh Roy, C.J.

Heard Sri.Legith T.Kottakkal, the learned counsel appearing for the petitioner. Also heard Sri.K.V.Sohan, the learned State Attorney appearing for the Union of India (Respondent No.2).

2. Claiming to be a disinterested litigant, a person holding affiliation to a political party and an agriculturist by profession has filed this Public Interest Litigation. He prays for, *inter alia*, a declaration that the *Code of Cannons* which confers powers to the Vatican Pontiff over the properties of the Churches situated in India, is unconstitutional and also opposed to sovereignty of India. According to the petitioner, the Pope sitting in Vatican can have no say in the transaction of the Church properties, in this country.

3. For the petitioner Sri.Legith T.Kottakkal, the learned counsel submits that the properties of the Church are administered as public trusts and therefore the alienation/transfer of those assets should be only in accordance with leave of the Court, obtained under *Section 92* of the Code of Civil Procedure, 1908. The learned counsel argues that when the properties of the Churches (Respondents Nos.3, 4 and 5) are to be managed, the Pope should have no authority to issue directions to the Bishops to administer these properties in a certain manner. With these projections, the petitioner seeks declaration that the Roman Pontiff should have no power to administer the immovable properties, under the control of the Churches in India.

4. Considering the nature of the PIL, this Court questioned the justification for the present Public Interest Litigation. The learned counsel Sri.Legith, in response, would

submit that the petitioner, although is affiliated to a political party, has no personal interest in the matter and is concerned only with administration of the Churches' properties, in accordance with the laws of this country and not under the *Code of Cannons*, promulgated by the Roman Pontiff. The litigant then claims that he is not canvassing any personal interest but is espousing the interest of others who are concerned with the administration of the Churches' properties.

5. In the above context, it is necessary to observe at the outset that India is a secular country which guarantees fundamental freedom under *Article 26* of the Constitution, to every religious denomination to own and acquire movable and immovable properties, provided such administration of properties is in accordance with the Indian Laws. The scope of this Article was enumerated by the Supreme Court in *Ratilal Panachand Gandhi and Others v. State of Bombay and Others* in *AIR 1954 SC 388*, where Justice V.K.Mukherjea, speaking for the Constitution Bench, stated as under:

".....
11. So far as Art. 26 is concerned, it deals with a particular aspect of the subject of religious freedom. Under this article, any religious denomination or a section of it has the guaranteed right to establish and maintain institutions for religious and charitable purposes and to manage in its own way all affairs in matters of religion. Rights are also given to such denomination or a section of it to acquire and own movable and immovable properties and to administer such properties in accordance with law.

The language of the two cls. (b) and (d) of Art. 26 would at once bring out the difference between the two. In regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property but only in accordance with law. This means that the State can regulate the administration of trust properties by means of laws validly enacted but here again it should be remembered

that under Art. 26 (d), it is the religious denomination itself which has been given the right to administer its property in accordance with any law which the State may validly impose. A law, which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Art. 26 (d) of the Constitution.
....."

6. It is apparent from the above ratio that so long as administration of the properties of Churches is done in accordance with the applicable laws in India, in matters of internal administration and policy, the Court's intervention would not be warranted, except in situations contemplated under *Section 92* of the Code of Civil Procedure. Even in such situation, the aggrieved party has to approach a civil court and not the High Court, by way of Public Interest Litigation.

7. In the instant case, the litigant is not an aggrieved party who belongs to the particular denomination. Moreover, this is also not the appropriate court to raise grievance pertaining to *Section 92* of the Code of Civil Procedure. The Court's perception here is that motive of this PIL is extraneous and perhaps cheap publicity.

8. Such misuse of the Court's forum will have to be deprecated in the strongest terms and we must remind ourselves of the dictum of the Supreme Court in *Tehseen Poonawalla v. Union of India* reported in *2018 (6) SCC*. The paragraph 98 of the judgment reads as follows:

".....
98. The misuse of public interest litigation is a serious matter of concern for the judicial process. Both this Court and the High Courts are flooded with litigations and are burdened by arrears. Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine causes. This Court has a long list of pending cases where the personal liberty of citizens is involved. Those who await trial or the resolution of appeals against orders of conviction have a legitimate expectation of early justice. It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda. This has spawned an industry of vested interests in litigation. There is a grave danger that if this state of affairs is allowed to

continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention. Worse still, such petitions pose a grave danger to the credibility of the judicial process. This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law. This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive market for goods and services. Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office. Courts resolve disputes about legal rights and entitlements. Courts protect the rule of law. There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space.

.....”

9. We have examined the averments and considered the submission made by the petitioner's lawyer. In the light of the dicta laid down by the Supreme Court and finding the Writ Petition to be a frivolous one, we deem it appropriate to dismiss the same by imposing a cost of Rs.25,000/- (Rupees Twenty five thousand only), to discourage the litigant from filing such frivolous PIL in future. The cost amount shall be paid to the *High Court Legal Services Committee* within two weeks from today, failing which, revenue recovery proceedings should be initiated against the petitioner. It is ordered accordingly.

**Sd/-
Hrishikesh Roy
Chief Justice**

**Sd/-
A.K.Jayasankaran Nambiar
Judge**

okb

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P.S. to Judge

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	COPY OF THE FUNDAMENTAL LAW OF VATICAN CITY STATE.
EXHIBIT P2	COPY OF THE RESOLUTION ADOPTED BY GENERAL ASSEMBLY OF UNITED NATIONS ON 1.7.2003 WITH RESPECT TO VATICAN CITY
EXHIBIT P3	COPY OF THE LIST OF NATIONS HAVING DIPLOMATIC RELATION WITH VATICAN CITY STATE
EXHIBIT P4	COPY OF THE PROMULGATION OF CODE OF CANON 1983 BY THE ROMAN PONTIFF.
EXHIBIT P5	COPY OF THE PROMULGATION OF CODE OF CANONS FOR EASTERN CHURCH DATED 18.10.1990 BY THE ROAMN PNTIFF
EXHIBIT P6	COPY OF THE ROMAN PONTIFF ISSUING AMENDMENTS DATED 18.5.1998 TO THE BOTH CODE OF CANONS.
EXHIBIT P7	COPY OF THE COMMUNICATION DATED 22.6.2018 APPOINTING NEW ADMINISTRATOR TO ARCHEPARCHEY OF ERNAKULAM-ANGAMALY BY ROMAN PONTIFF
EXHIBIT P8	COPY OF THE NEWS DATED 22.6.2018 PUBLISHED IN VATICANNEWS AND DOWNLOADED FROM THE OFFICIAL WEBSITE
EXHIBIT P9	COPY OF NEWS PUBLISHED NEW INDIAN EXPRESS DATED 2.4.2019 DOWNLOADED FROM ITS WEBSITE
EXHIBIT P10	COPY OF THE MEDIA REPORT DATED 23.3.2019 PUBLISHED IN THE HINDU DOWNLOADED FROM ITS WEBSITE
EXHIBIT P11	COPY OF THE FIR NO 414 OF CENTRAL POLICE STATION, ERNAKULAM (WITH ENGLISH TRANSLATION)
EXHIBIT P12	COPY OF THE FIR NO 342 OF THRIKKAKARA POLICE STATION (WITH ENGLISH TRANSLATION)