

In the Court of the I Addl. District Judge, Ernakulam

Present:

Sri. J. Devadaman, BSc., B.L., I Addl. District Judge
Monday 21st December 1998/30th Agrahayana 1920

I.A. 1569/98

in

O.S. 31/1998

Petitioners/Plaintiffs:

1. N.U. John,
S/o. Ulahannan,
Njattuthottiyil,
Kolencherry, Aikkaranad South Village,
Kunnathunadu Taluk.
2. P.P. Thomas, S/o. Pathrose,
Pookolayil House, Kolencherry,
Aikkaranad South village,
Kunnathunadu Taluk.

By Adv. Biju Abraham

Respondents/Defendants:

Fr. E.P. Zacharia,
Echikkottil House,
Thiruvankulam,
Kanayannur Taluk.

By Adv:

Petition filed under order 39 Rule 1 r/w section 105 of the CPC praying this court to restrain the respondent/defendant by an order of temporary injunction from entering and functioning as a priest in the St. Peter's and St. Paul's Church, Kolencherry till the disposal of the suit.

This petition heard on 16.12.98 in the presence of the advocates concerned the court on this day passed the following

Order

This is an application filed by the plaintiffs for a temporary injunction. The suit itself is one for permanent injunction on the following allegations:-

Plaintiff's are parishioners of the St. Peter's and St. Paul's Orthodox Syrian Church, Kolencherry. The said church is a parish church of the Malankara church and is governed under the provisions of the 1934 constitution of the Malankara

temporary injunction was dismissed on 31.3.98.

church. The plaintiff church is included in the Kandedad Diocese and is under the control and supervision of the Metropolitan of the Kandedad Diocese. In the church cases reported in AIR 1995 SC 2001, the Hon'ble Supreme Court declared that all parish churches of the Malankara church are to be administered under 1934 constitution of the Malankara church. Sec.38 of the constitution prescribes that each parish church is to have only one vicar, the other priests in the church being assistants to the Vicar. Sec 40 of the constitution says that the Vicar and other priests in a church are to be appointed, removed and transferred by the Diocesan Metropolitan. Sec.55 of the constitution says that each Diocese shall have only one Metropolitan. Dr. Mathews Mar Saverios is the Metropolitan of Kandedad diocese, duly ordained and consecrated under the 1934 constitution. Paulose Mar Philikinos of the patriarch group was a rival contender to the post of the Metropolitan of Kandedad Diocese. On his death on 1.9.96, Dr. Mathews Mar Saverios became the sole Metropolitan of the Diocese. As such he is entitled to appoint, remove and transfer all priests in the parish churches of that Diocese. The defendant is a priest supporting the patriarch group. He was temporarily appointed, as a priest to function in the Kolencherry church by the 1st Adm. District Court, Ernakulam, pending trial of C.S.19/89, when an Adm. District Receiver was managing the church. That suit was subsequently

dismissed, and the church was handed over to the pre-existing managing committee. By Kalpana dated 31.3.98, the Metropolitan of Kandanad has transferred the defendant from Kolencherry church and the order was received by defendant on 6.4.98. Under law, the defendant is bound to obey the orders but the defendant has proclaimed that he intends to flout the orders, and to continue to function as a priest in the Kolencherry church. Defendant has filed a suit O.S.340/97 before the Munsiff's Court, Perumbavoor against Dr. Mathews Mar Savarios and others for an injunction restraining the Metropolitan from transferring the defendant. But the court, after hearing both parties dismissed the application for temporary injunction. Plaintiffs are therefore entitled to get a decree of perpetual injunction restraining the defendant from entering the plaintiff church and functioning as a priest there.

Along with the suit, the plaintiffs filed the present application for a temporary injunction.

Defendant filed a counter affidavit contending as follows: Plaintiffs have no locus standi to file the suit. They are not in anyway affected in the defendant continuing as a priest in the plaintiff church. Plaintiffs are attempting to enforce the Kalpana dt. 31.3.98 issued by Dr. Mathews Mar Savarios. O.S.340/97 was instituted by the defendant against that Bishop for an injunction against transferring the defendant. It is true that I.A.1646/97, in that case, filed by the defendant for an injunction was dismissed on 31.3.98.

It was on that day itself that the above-said Kalpana was issued by Dr. Mathews Mar Severios. Defendant has already preferred an appeal as CMA 24/98 before the Addl. District Court, Paravur against the order in I.A. 1646/97 and the same is pending. Defendant has also filed I.A. 320/98 in the same court, for staying the operation of the order in I.A. 1646/97. The Catholic faction of the plaint church created law and order situation in the plaint church resulting in a prohibitory order being issued by the Sub Divisional Magistrate, Navattupuzha under Sec. 144 Cr.P.C. The plaint church is closed as per that order. During the pendency of O.S. 19/80, there were three priests in the plaint church, they were functioning in turns, one week each. When the priest belonging to the Patriarch group died, the defendant herein was appointed in his place on a permanent basis. An appeal, A.S. 304/98 preferred by the defendant herein against the dismissal of O.S. 19/80, is pending before the Hon'ble High Court. Dr. Mathews Mar Severios has no authority to transfer the defendant or post another priest in his place. That Kalpana is not binding on the defendant. Defendant has already declared allegiance to the 1934 constitution. Plaintiffs are not entitled to any relief sought for. The I.A. is to be dismissed.

Exts. A1 to A5 are marked by the plaintiffs and Exts A1 to A8 are marked by the defendants.

The point for consideration is, "Whether the plaintiffs are entitled to get a temporary injunction as prayed for?"

The point: The defendant was appointed as a priest in the plaintiff church as per an order of this court in OS.19/80. Ext. A4 is the copy of that order. It is shown in that order that 'without prejudice to the contentions of the parties, Fr.E.P. Zachariah Echikattil is appointed as a priest of the suit church in the place of the ~~deceased~~ deceased priest, Fr.John Kalappurakkal'. It is admitted that the said suit case was finally dismissed by this court.

Now, by a kalpana dated 31.3.98 Fr.Mathews Mar Saverios has transferred the defendant from the plaintiff church and appointed another priest in his place. Ext.A2 is the attested copy of that kalpana. Plaintiffs prayed that in the light of Ext.A2 kalpana, the defendant should be restrained from entering the plaintiff church and functioning as a priest there. The defendant has challenged the authority of Dr.Mathews Mar Saverios to issue such a kalpana. He has also challenged the status of the plaintiffs to bring the suit and application. According to him he is a lawful priest and is not liable to be transferred.

In the church cases, reported in AIR 1995 SC 2001, the Hon'ble Supreme Court held that the 1934 constitution of the Malankara church is binding on all the parish churches of the

Malankara church. It follows that the plaint church is to be administered under the provisions of the basic constitution. The plaint church is a parish under the Kandanad Diocese. It can not be disputed that Dr. Mathews Saverios is the Metropolitan of that Diocese and the contention of the defendant challenging the authority of Dr. Mathews Saverios has no merit. Ext. A5 is the copy of the "Statement" issued by the present Catholics in respect of the consecration and consecration of Dr. Mathews Saverios. It is the right of the Metropolitan to see that peace and order is maintained in every church in that Diocese.

Ext. A4 order would indicate that by the dismissal of O.S. 19/80 the order appointing the defendant would cease to be in force as on the date of the dismissal of the suit. The words "without prejudice to the contentions of the parties" in that order would indicate so.

When the defendant ascertained that the Diocesan Metropolitan was intending to take some action against him, he filed O.S. 340/77 before the Munsiff's Court, Perumbavoor for an injunction against the Metropolitan. Defendant moved P.A. 1646/97 for a temporary injunction. After hearing both sides, the learned Munsiff dismissed the application for injunction.

Ext.A3 is the copy of the order in IA 1646/97. Even though the defendant raised a plea that he has challenged that order by preferring a QMA, and filed application for a stay of the implementation of that order, so far no stay is granted in it, and Ext.A3 order is still in force.

It is a well settled principle that a transfer of an employee is only an administrative arrangement. In that view, Ext.A2 does not suffer from any infirmity. Since I.A. 1646/97 was dismissed and since that order remains in force, the defendant is bound to obey the Kalpana of the Metropolitan. He can very well be posted as a priest in some other church. In order to maintain order and peace in the church, it is better that the defendant leave the plaintiff church.

Under these circumstances, I hold that the plaintiffs are entitled to get a temporary injunction as prayed for.

Point is found accordingly.

In the result, the defendant is restrained by an order of temporary injunction from entering the plaintiff church and functioning as a priest there. This I.A. is allowed as above.

Pronounced in open court on this the 21st day of December 1998.

Sd/-

J. Devadana,
I Addl. District Judge

Appendix

Exhibits for Plaintiffs:

- A1. Constitution of the Malankara Orthodox Syrian Church
- A2. Notarised attested copy of kaspama no.10/1 98
- A3. Notarised attested copy of order in IA.1012/98 in OS.340/97 of the Mansiff's Court, Ernakulam
- A4. Notarised attested copy of the appointment of defendant as a priest of the Malankara Syrian Church
- A5. Notarised copy of the bequest to Dr. Severios Mar
- A6. Notarised copy of the will of Paulose Mar

Exhibits for Defendants:

- B1. Notarised copy of kaspama No.43/98 issued by Ceeverghese Mar Gregorios.
- B2. Order in IA 1012/98 in OS.11/98 of the Dist. Court, Ernakulam.
- B3. Affidavit filed by 8th defendant in OS.19/98 before the Dist. Court, Ernakulam
- B4. Interim orders of the Hon'ble Supreme Court in Civil Appeal No.4953-60/90
- B5. Order in IA.10-31/91 in Civil Appeal 4953/90 60/70 of the do. do.
- B6. Order in IA 13-15 in Civil Appeal 4953/90 of the do. do.
- B7. Order No.46-2015/91 and 46 2015/90(1) in the Sub Divisional Magistrate, Muvattupuzha
- B8. Order No.12.31035/98-1 of the District Collector, Ernakulam.

Sd/-

I Akil, District Judge

typed by: *[Signature]*

//true copy // (By Order)

[Signature]
Jr. Superintendent