

IN THE HIGH COURT OF KERALA AT ERNAKULAM
Present :

THE HONOURABLE MR. JUSTICE K. P. BALACHANDRAN

Friday the 23rd day of January 2009/3RD MAGHA 1930

WPC.No. 2684/2009 (T)

PETITIONER/

1. H.G.THOMAS MAR ATHANASIUS, AGED 70 YEARS, S/O.LATE K.T.THOMAS, RESIDING IN BETHEL ARAMANA, CHENGANNUR.
2. ZACOHARIAH MAR ANTHONIOS, AGED 60 YEARS, S/O.LATE W.C.ABRAHAM, METROPOLITAN OF COCHIN DIOCESE, RESIDING IN ZION SEMINARY, KORATTY EAST, CHALAKKUDY.
3. FR.K.T.ALIAS, AGED 59 YEAS, S/O.LATE THOMAS, KUZHIVELIL HOUSE, VETTIKKAL P.O., MULANTHURUTHY.

RESPONDENT/

THOMAS MAR DIONYSUS, AGED ABOUT 81 YEARS, RESIDING IN MAR IGNATIUS SEMINARY, KOTHAMANGALAM.

Writ Petition praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to 1) appoint an Advocate commissioner to verify and report whether the respondent is entering in the Thrikkunnath Sehion Seminary church Aluva from 24.1.09, 2.00 p.m. onwards, till 2.00 p.m. on 26.1.09. 2) direct the superintendent of Police ^AAluva Rural to render adequate and effective police protection for the enforcement of order dated 3.8.08 in IA.2196/01 as against the respondent and his supporters form 24.1.09 to 26.1.09 by preventing their entry to the Thrikkunnath Seminary church Aluva. 3) to stay the observation of the lower court in Ext.P7 order that the order of the injunction is not enforceable as against the respondent in respect of Thrikkunnath Seminary church.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of the WP(C) and upon hearing the arguments of SRI.T.KRISHNANUNNI (SR) & SRI. BIJU ABRAHAM Advocates for the petitioner, the court passed the following

K.P. Balachandran, J.

W.P. (C)No.2684 of 2009 T

ORDER

Heard counsel for the petitioners.

2. By the impugned order, the court below refused to grant police protection observing that in O.S.No.5/81 it has been found that the disputed Church is a Seminary Church and the declaration sought for to the effect that it is a Parish Church, administered as per 1934 Constitution, was not granted by the Special Court dealing with Church cases; that the said judgment, though under challenge before this Court, has not been modified or reversed and hence, at this stage, it is not possible to conclude as to whether the Church is a Parish Church and hence, no order of temporary injunction is in force as against the respondents from entering into the Church and such being the case, there is no justifiable ground to direct the Rural S.P., Aluva to intervene to implement the order on I.A.No.2196/01 dated 3.8.2002 of that

court and that therefore, it is also quite unnecessary to appoint a Commissioner as prayed for, to be the observer to report as to what is happening in the Church, if at all there is any violation of the injunction order.

3. This writ petition having been filed today on an urgent motion and the respondents have no notice, it may not be proper for this Court to grant police protection without hearing the respondents, so as to enable one of the parties to the controversy to exclude the other forcibly without even enabling them to have their say.

4. In the result, by way of an interim order, I direct the Rural S.P., Aluva to see to it that no law and order situation takes place in the Thrikkunnath Seminary Church and that no untoward incident takes place there. This order may not be understood as an order granting police protection to the petitioners or to the respondents. In the meanwhile, it appears that it would be advisable to

appoint a Commissioner from this Court to see and report as to whether any high handed act is done by either side so as to provoke and create the situation worse, so that it may be of use to this Court to pass appropriate orders, if need be, during the days to come, as an explosive situation cannot be allowed to prevail whatever be the rights asserted by the parties.

5. Advocate Sri.Sreelal Warriar is appointed as Commissioner. The commission bata of Rs.25,000/- shall be paid to the Commissioner by the petitioners today itself and memo has to be filed before this Court positively on 27.1.2009. The Commissioner shall file report on 29.1.2009 overseeing as to how the memorial prayers were conducted in the Church from 24.1.2009 to 26.1.2009 and as to whether there was any overtact from the side of any fraction to precipitate matters. The Commissioner is authorised to get all assistance from the Rural S.P., Aluva for the purpose of

seeing that no untoward incident takes place in the Thrikkunnath Seminary Church. Issue copy of this order to the counsel for the petitioners as also to the Commissioner urgently. A copy of this order shall be furnished to the Government Pleader also, so as to enable him to give necessary instructions to the Rural S.P., Aluva.

Issue notice by speed post acknowledgment due to the respondents and post on 30.1.2009.

23rd January 2009

Sd/-
K. P. Balachandran (Judge)

Sobin
Assistant Registrar

23-1-09