

P.SOMARAJAN, J.

**Crl.M.C.Nos.8936/2019,9115/2019 &
Crl.M.C.Nos.205,1409,1414,2136,2138 of 2020**

Dated this the 27th day of October, 2022

O R D E R

A batch of seven cases challenging criminal action for offences under Sections 120B, 406, 409, 418, 420, 423, 465, 467, 468 and 34 IPC against the Major Archbishop of Syro Malabar Church had been disposed of by this court by order dated 12.08.2021 with a direction to the first respondent, the State Government. Paragraphs 47, 48 and 49 of the said order are extracted below for reference:

"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 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 has come 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 Law 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."

2. The power under Section 482 Cr.P.C. to suo motu enquire into either violation of constitutional mandate or any other violation akin to that for doing substantial justice 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 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 has come 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 (see the discussion made by this court in paragraph 47 of the order extracted above). Directions were issued with respect to the property

involved approximating 99.500 cents purportedly belonged to the Syro Malabar Church. In abidance of the order, the State Government submitted a half-baked report without touching into the question of the nature of property and its ownership. Manipulation of several documents under the facade of power of attorney was also not taken up. There is no provision for executing a power of attorney by an inanimate body. But, powers of attorney were invariably and indiscriminately used to ostensibly obtain property left out by an unincorporated charitable association by the appellation "Sisters of Destitute". The transfer of the property in favour of another unincorporated body by name "Alexian Brothers" and power of attorney alleged to have been given by the said association in the name of one Fr. Sebastian Vadakkumpadam and the document of transfer created based on such power of attorney, though prima facie evident from the document annexed to the report, was not properly addressed. The question as to whether it is a *bona vacantia* property was also mystifyingly given the short shrift.

3. The transfer in favour of another unincorporated association by name "Alexian Brothers" by sale deed No.1838 of 1996 has no legal validity. In fact, the said property left out by "Sisters of Destitute" hence would come under the purview of *bona vacantia*. The fact that *bona vacantia* property was ostensibly taken away and concealed surreptitiously for such a long period would only reveal the machinations and chicanery and the series of fraud played over the property, that too, in total violation of the mandate under Section 92 C.P.C.. It is in the said circumstance, the Union of India and the Central Bureau of Investigation were suo motu impleaded so as to effectively address the issue and unravel the ramifications of this colossal subterfuge.

4. As per recital contained in the deed No.1332 of 1118ME, some properties were purchased in the name of Kaderu from whom that property was purchased by "Sisters of Destitute" (agathikalude sahodarimarude sabha) under sale deed No.1160 of 1995. The said property purchased for the purported benefits of destitute was given to "Alexian

Brothers" by sale deed No.1838 of 1996. No sanction under Section 92 C.P.C. was obtained for alienating the property held in trust by "Sisters of Destitute" to another association by name "Alexian Brothers". It is not clear who had represented the unincorporated charitable trust for effecting a sale in the year 1996 in the name of an unincorporated body "Alexian Brothers". If it is a property obtained in trust for the benefit of destitute by an unincorporated association by name "Sisters of Destitute", it cannot simply be alienated or transferred. Further, permission for transfer under Section 92 C.P.C. can be obtained only on satisfying the mandate under sub-section (3) of that Section and not otherwise. The property held in trust for the benefit of destitute cannot be alienated or transferred by undermining the purpose and object of the trust set up for a laudable and altruistic goal. It is also not clear as to what is the competency of the executant of the said document to casually convey the said property to "Alexian Brothers". The entity by name "Sisters of Destitute" prima facie appears to be an unincorporated

association acting for the benefit of destitute, and for that purpose, the said property was purchased. Subsequently, under the veneer of a power of attorney of the said unincorporated body "Alexian Brothers", the said property was settled in favour of Major Archbishop Varkey Cardinal Vidayathil by one Fr. Sebastian Vadakkumpadam under settlement deed No.4950/2007 claiming that he is the power holder of "Alexian Brothers". The fraud played in the execution of settlement deed and the creation of power of attorney is brazenly violative of all cannons of law and is manifestly discernible to even an onlooker. Firstly, there is no provision for executing a power of attorney by an unincorporated association by name "Alexian Brothers". So the very status of the power holder Fr. Sebastian Vadakkumpadam and creation of power of attorney in his favour would tell upon what is behind it. The ostensible transfer of trust property by way of settlement deed in favour of Major Arch Bishop Varkey Cardinal Vidayathil is a clear attempt to snatch away the property of destitute held in trust which is morally repugnant, ethically heinous and

absolutely erroneous and malafide. There is no scope for executing a power of attorney by an inanimate unincorporated Association especially with respect to the property acquired in trust for the benefit of destitute, for which, no explanation was given by the State Government in their report. I am at a loss to understand as to how and under what capacity an inanimate body had given a power of attorney, that too, without disclosing the legal entity or jural entity. There is no provision for giving a power of attorney by a non-living legal entity. It is submitted that "Alexian Brothers" is an unincorporated religious congregation of brothers of Roman Catholic community. All these would prima facie show that by giving a religious name or under the guise of charity, any person or group of persons can acquire the property without the liability to account for it or its utilization. As it has become the usual practice in the State of Kerala, it warrants that these large scale malpractices which are rampant in our State has to fall under judicial scrutiny more rigorously hereafter.

5. The government property is not an exception to the massive encroachment by religious/charitable unincorporated organization. Public property, puramboke land and government property still remain vulnerable to massive and organized rapacious encroachment. There is no provision for accounting of the assets and its utilization by such unincorporated organization either so called religious or charitable. The report submitted by the State Government without touching into the abovesaid relevant factors prima facie appears to be faulty and very casual. Even after the amendment to the Land Conservancy Act by incorporating penal provisions as against the revenue officials, nothing has been mentioned in the Act as to who has to take cognizance. No body has been specified therein or constituted under the said Act. Necessarily, it must be understood that cognizance should be taken either by the police empowered in that behalf or by the concerned Magistrate. But there is no machinery available to bring the same to the notice of any of such competent authority. Necessarily, the abovesaid provision can be construed as a

mere eyewash. It is relevant to extract the constitutional mandate under Articles 294 to 296 of the Constitution of India for reference:

"294.Succession to property, assets, rights, liabilities and obligations in certain cases.-

As from the commencement of this Constitution-

(a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State, and

(b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State, subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.

295.Succession to property, assets, rights, liabilities and obligations in other cases.-

(1) As from the commencement of this Constitution-

(a) all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part B of the First Schedule

shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be purposes of the Union relating to any of the matters enumerated in the Union List, and

(b) all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of the First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purposes for which such rights were acquired or liabilities or obligations were incurred before such commencement will thereafter be purposes of the Government of India relating to any of the matters enumerated in the Union List, subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) Subject as aforesaid, the Government of each State specified in Part B of the First Schedule shall, as from the commencement of this Constitution, be the successor of the Government of the corresponding Indian State as regards all property and assets and all rights, liabilities and obligations, whether arising out of any contract or otherwise, other than those referred to in clause (1).

296. Property accruing by escheat or lapse or as bona vacantia.-

Subject as hereinafter provided any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it is property situate in a State, vest in such

State, and shall, in any other case, vest in the Union:

Provided that any property which at the date when it would have so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as the purposes for which it was then used or held were purposes of the Union or a State, vest in the Union or in that State.

Explanation.- In the article, the expressions "Ruler" and "Indian State" have the same meanings as in Article 363."

6. The Apex Court has laid down what actually amounts to "Escheat" and "*bona vacantia*" in **Sheo Nand and Others v. Deputy Director of Consolidation, Allahabad and Others (AIR 2000 SC 1141)** and laid down that "Escheat" literally means "to revert to the State". This event has taken place in default of heirs or devisees. Property vesting in State by the Principle of Escheat is not new. The Act of 1853 made by British Parliament dealt with 2 situations namely i) where there was no heir or successor and (ii) where there was even no owner of property. The first of two situations was described in terms of "Escheat or lapse" and second in terms of "*bona vacantia*". The property which is

the subject of the alleged crime having an extent of 99.500 cents covered by settlement deed No.4950/07 dated 21/09/2007 (Annexure R2(d) in Crl.M.C.No.205/2020) and sale deed No.1838 of 1996 left out by the unincorporated association "Sisters of Destitute" would fall under *bona vacantia* and would revert to the State Government. It is not permissible for any person or group of persons to organize any new association in the name and style of "Sisters of Destitute" to tide over the fact of *bona vacantia* and the State must keep vigil against formation of such fictitious organizations. The State Government is duty bound to take over such *bona vacantia* property and to preserve it.

7. It is relevant to take note of the study conducted by the Ministry of Statistics & Programme in 2012 and the final report published on non-profit institutions in India. The study took into consideration only those entities which were registered under the Societies Registration Act, 1816, the Bombay Trust Act, 1950 and companies registered under the Companies Registration Act, 1956. The result indicated

the existence of 31,74,420 non-profit institutions across India. The study further reveals that the number of unregistered organizations is much more than the registered or formally registered. There is no single central legislation which lays down the law governing charity or charitable organizations in India. Now the term 'charity' is largely used to accumulate wealth and property under that guise and to give away the same without accounting the same to any responsible authority. Article 19(1)(c) of the Constitution of India guarantees the right of all citizen to form association or union, but that does not mean that it should be without any legal status or legal recognition, when involves acquisition and accumulation of large quantity of wealth and assets under the guise of charity. The Constitution in Part IV lays down Directive Principles of State Policy. The subject of charities, charitable institutions, charitable and religious endowments and religious institutions is listed as entry No.28 in the concurrent list of the 7th schedule to the Constitution of India which means that both the Central and State

legislatures are competent to legislate and regulate charitable organizations. The legal frame work governing charitable organizations in India is quite complex due to the multiplicity of legislations. The formation of a trust is designed to be on a different footing as it is not necessary to create a trust by a formal document (Radhasoami Satsung v. VIT [(1992) 193 ITR 321 (SC)]). This would show the unavoidable necessity for a central legislation in order to regulate charitable organizations and its working. Hence, the same is placed before the Central Government so as to explore the possibility of central uniform legislation to regulate the functioning of charitable organizations/institutions and religious institutions listed in Entry No.28 of Concurrent List of VIIth Schedule of the Constitution of India.

8. Instances were also noticed regarding the non-implementation of various judgments of this Court pertaining to illegal encroachment over the government land and the public property due to lack of an agency which can proceed further in the matter. Normally the person who

brought up the matter alone will be interested in executing it and some times the will of such person will be defeated by tremendous pressure, threat or influence. Ultimately, the judgment/order for removal of encroachment over the Government land/public property would go unattended and unimplemented. In fact, all the properties of State Government/puramboke land/vacant land belonged to the public and unsurveyed land are still highly vulnerable to such mischief and encroachments especially by religious organization and it will be perpetuated by obtaining pattayam under the garb of Land Assignment Act especially during the conduct of "Pattayamela" (festival of pattayam) periodically organized by the State Government. It is in the State of Kerala periodical festivals are being conducted by the State Government for the sole purpose of issuing pattayam in the name of "Pattayamela" (festival of pattayam) and thousands of pattayams are being issued every year by generating a conducive atmosphere to encroachers, especially organized encroachers under the guise of religious institutions. It is a fact that nobody will dare

to touch on it or challenge it because of the political and religious power held by those institutions on account of the vote bank and it is quite easy for them to get pattayam over the said property. Earlier, an officer in the cadre of Deputy Tahsildar Sri.Ravindran had issued hundreds of pattayams to various persons under the garb of Land Assignment Act and it has become a big scam and a matter of hot discussion in almost all dailies in Kerala for a long period. Recently, it is learnt that the State Government has cancelled some of the said pattayams. This would show the big lacuna in the provisions of the Land Assignment Act and the Rules thereunder, by which any officer of the cadre of Deputy Tahsildar can issue pattayam with respect to government land at his whims and fancies to any person. The various pattayams issued by the abovesaid Deputy Tahsildar was referred by media and general public as "Ravindran Pattayam". It is too dangerous that even a single person who holds the office of Tahsildar or Deputy Tahsildar can misuse the provisions of the Land Assignment Act and is at liberty to grant pattayam over the Government land at his

whims and fancies would show the big lacuna and shortcomings in the legislation.

9. Another instance was also noticed by this Court during the disposal of R.S.A.No. 711/2008 on 26/02/2020 **(Shafi T.M. And Others v. G.L. Khaderkunhi and Others 2020 (2) KHC 410 = 2020 (2) KLT 454 = ILR 2020 (2) Ker. 181)**), wherein the provisions of Land Assignment Act was misused to promote land mafia under the guise of assignment of property to landless persons. The restriction earlier imposed against alienation was subsequently reduced to seven years and then to three years without assigning any reason solely for the purpose of promoting and encouraging the affluent land mafia and they in turn obtained the property given to landless persons by entering into contract for sale by stipulating three years period on the very same day of assignment of pattayam and thereby defeated the very purpose. The property so assigned to landless persons, never came to their possession, but to the hands of land mafia directly under the said device of sale agreement. Prima facie, it appears that seven years

period restriction imposed against alienation was reduced to mere 36 months (three years) so as to facilitate acquisition of property by land mafia. Paragraph 6 of the said judgment is extracted below for reference:

"6. This had come to the notice of this court by the intervention of yet another person, the 2nd defendant who obtained sale deeds from the respective first defendant, the landless persons before the expiry of three years period of restriction on alienation. It was not challenged either by the respective first defendant or by the state government. In fact, there is an easy walk over in the matter of property given to landless persons and this will ultimately go to some other person who are engaged in such activities and it is well evident from the fact that the 2nd defendant, yet another person purchased the property under two sale deeds, that too, prior to the expiry of prohibited period of three years. But no protest was seen raised against the said document, though it was executed in contravention of prohibitory period of alienation incorporated in the pattayam. The state government has not so far challenged the said document and no action was taken in that behalf. None has challenged the said document and even the state government has not raised any objection. They have not even challenged the creation of a contract for sale executed in anticipation in favour of the plaintiff and the creation of two subsequent sale deeds in the name of 2nd defendant, that too, prior to the expiry of period of prohibition on alienation. The involvement of two rival groups in getting the property in their

respective names is well evident and this would show and speak volumes what is going on in our society. The state government is duty bound to protect the interests of landless person and to preserve their property by incorporating sufficient protective measures. The reduction of period of restriction to three years (36 months) gives the land mafia a shot in the arm in getting the property of landless person in their name. This would show an illegal nexus between the land mafia and landless persons in extorting the property belonging to the state government under the facade of a landless person. The reduction of period of alienation into three years further encourages an easy mode to plunder the property of state government. Since it is not an exception, but involves systematic gobbling up of property belonging to the government in large scale under the veneer of landless persons, a detailed enquiry by an independent agency is imperative and the state government is duty bound to conduct such an enquiry to expose the nefarious activities of the land mafia."

10. This kind of blatant manipulation of government land by the land mafia and facilitation made to make it easy to divest the property given to the landless persons by dubious promises and paltry payment has so far not been enquired into or investigated by the State Government in spite of direction issued by this Court presumably on the flimsy reason that the State Government has not been made

as a party to the said litigation. So far no communication has been received by this Court in this regard.

11. The fact that nobody has taken up the issue so far and I would say nobody would have the effrontery to take up the issue against such organized encroachers, would show the existence of an invisible conducive atmosphere favourable to the organized encroachers/land mafia and the upper hand they enjoyed without challenge from any corner. This reprehensible inaction on the part of Government, political leaders and the society at large has given leverage to such massive assaults over the large tracts of properties all over Kerala by some religious/charitable institution/organization added by the fact that it is quite easy for them to obtain pattayam under the bargain of vote bank they possessed. A congenial environment is still in existence in the entire State of Kerala promoting encroachment over the Government land with the apparent acquisition of properties by such institutions. This has given immense wealth and authority to religious institution to dominate the will of Government machineries and it is

injurious to our democratic system and the principle of equality and liberty guaranteed under the Constitution. This would speak volumes of the manner in which the person or the group of persons have trampled over the will of general public and the officials under the Government. Both the State Government and the Central Government are duty bound to follow the constitutional mandate and to preserve properties of *bona vacantia* and property belonged to the public at large. The property ostensibly obtained by such bodies/institution has to be enquired into and investigated by taking proper action against the culprits.

12. As discussed in the judgment, the present incident is only the tip of an iceberg. Necessarily, the State Government is duty bound to take over all property of *bona vacantia* and to preserve it, remove all sorts of encroachment over the Government land, to scrutinize the validity of pattayam, if any obtained under the garb of Land Assignment Act by misusing its provisions and to conduct a survey in order to find out such incident all over Kerala, for which, the State Government (the Chief

Secretary) shall constitute a State wise high power body for its implementation and to supervise the survey besides formation of District level body headed by the respective District Collector and revenue head of each district and the Tahsildar. Assistance of forest officials can also be obtained whenever it is found necessary. It is also advisable for the State Government to legislate a state law by incorporating provision for periodical/quinquennial survey so as to find out any encroachment or invasion over the property of State Government/public property/property of *bona vacantia*. Needless to say that the State Government is also bound to register cases against the erring officers and the culprits under the provisions of Land Conservancy Act. The survey has to be completed by the State Government within a period of six months from today and report. The misdeeds and mischief done by various persons/institution to extort the property of public shall be investigated through the agencies available under the State Government such as Vigilance and Anti-Corruption Bureau etc. I may also request the Central Government to explore the

possibility of a uniform central legislation to regulate the functioning of charitable organization/institution and religious institutions listed in entry No.28 of concurrent list of VIIth schedule of Constitution of India including the constitution of a centralized body to address the issues pertaining to the income, expenditure, acquisition and disposal of assets of such bodies. The possibility of constitution of a centralized force/body for that purpose may be explored by the Central Government.

Post the matter on 31/05/2023.

Sd/-
P . SOMARAJAN
JUDGE

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