



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 16.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.Sr.Nos.109971 and 111067 of 2021

CRP.Sr.No.109971 of 2021:

Rt.Rev.Timothy Ravinder Dev Pradeep,
The Bishop, CSI Coimbatore Diocese,
CSI Diocese Office,
256, Race Course Road, Coimbatore – 18.

.. Petitioner

Vs.

1.Rev.Charles Samraj.N
Presbyter & Chairman,
No.213, Parsonage, CSI All Souls' Church,
Race Course Road,
Coimbatore – 641 018.

2.The CSI Coimbatore Diocese
Rep. by its Administrative Committee,
CSI Diocese Office,
256 Race Course Road,
Coimbatore – 18.

.. Respondents



CRP.Sr.No.111067 of 2021:

The CSI Coimbatore Diocese
Rep. by its Administrative Committee,
CSI Diocese Office,
256 Race Course Road, Coimbatore – 18.

.. Petitioner

Vs.

1.Rev.Charles Samraj.N
S/o.Late J.Nallamuthu
CSI All Souls' Church Campus,
Race Course Road,
Coimbatore – 641 018.

2.Rt.Rev.Timothy Ravinder Dev Pradeep,
s/o.late Timothy Devaraj
The Bishop- CSI Coimbatore Diocese,
256, Race Course Road, Coimbatore – 6411018.

.. Respondents

PRAYER in both the CRPs: Civil Revision Petitions filed under Section 151 of the Code of Civil Procedure, praying to set aside the fair and final order passed in I.A.No.2 of 2021 in O.S.No.938 of 2021 dated 11.11.2021 pending on the file of the District Munsif Court, Coimbatore and allow these Revision Petitions.

For Petitioner in CRP.Sr.No.109971 of 2021 : Mr.R.Viduthalai,
Senior Counsel

For Petitioner in CRP.Sr.No.111067 of 2021 : Mr.V.Selvaraj



COMMON ORDER

WEB COPY These two Revisions have been posted for maintainability. The order challenged in both these Revisions is an order passed by the learned Principal District Munsif, Coimbatore in I.A.No.2 of 2021 in O.S.No.938 of 2021, an application filed under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, seeking a temporary injunction restraining the Administrative Committee from taking any policy decisions on appointments, change of correspondents, apart from carrying out the day to day affairs until the conduct of 34th CSI Coimbatore Diocesan Council and an injunction restraining the defendants from interfering with the functions of the plaintiff as a Presbyter and Chairman of the CIS All Souls' Church, Coimbatore and for other reliefs.

2. The suit in O.S.No.938 of 2021 has been filed by the plaintiff seeking a declaration that certain resolutions passed by the Administrative Committee of the CSI Coimbatore Diocese on 19.07.2021 are illegal and null and void and for consequential injunctive reliefs.



3. Pending suit, the plaintiff sought for an injunction as stated above

in I.A.No.2 of 2021. The trial Court had granted an injunction as prayed for in I.A.No.2 of 2021. Aggrieved, the defendants in the suit, have come up with these Revisions.

4. The Revisions were filed under Article 227 of the Constitution of India. The Registry cited the availability of alternative remedy by way of an appeal under Order XLIII Rule 1(r) of the Code of Civil Procedure, as against the order passed in an application under Order XXXIX Rule 1 and 2 and queried the maintainability of the Revisions. The counsel for the petitioner in CRP.Sr.No.109971 of 2021 re-presented it, claiming that a Revision would be maintainable, in view of proviso to Section 115 of the Code of Civil Procedure. In view of such return endorsement made, both these Revisions are listed for hearing on maintainability.

5. I have heard Mr.R.Viduthalai, learned Senior Counsel appearing for the petitioner in CRP.Sr.No.10997 of 2021 and Mr.V.Selvaraj, learned counsel appearing for the petitioner in CRP.Sr.No.111067 of 2021.



6. Mr.R.Viduthalai, learned Senior Counsel would submit that *de*

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hors the availability of the remedy by way of an appeal, under the Code of civil Procedure, it is open to a party to invoke the supervisory jurisdiction of this Court, under Article 227 of the Constitution of India, especially when he is able to demonstrate that the trial Court had over stepped its limits in granting injunction.

7. He would draw my attention to the judgment of the Hon'ble Supreme Court in *Waryam Singh and another Vs. Amarnath and another* reported in *AIR 1954 SC 215*, wherein, the Hon'ble Supreme Court had held that the power of superintendence conferred by Article 227 of the Constitution of India is to be exercised more sparingly and only in appropriate cases, **in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors.**

8. He would also trace legislative history of Article 227 of the Constitution of India from Section 15 of the High Courts Act, 1861, to contend that the power of superintendence under Article 227 of the



Constitution of India, extends to judicial superintendence also and if the High Court finds that a Civil Court or a Tribunal has exceeded its jurisdiction or they have refused to exercise jurisdiction vested in them by law, it is open to the High Court to interfere under Article 227 of the Constitution of India.

9. Reliance is also placed in the judgment of ***Nagendra Nath Bora and another Vs. The Commissioner of Hills Division and Appeals, Assam and others*** reported in ***AIR 1958 SC 398***, wherein, the Hon'ble Supreme Court had after referring to the judgment in ***Waryam Singh and another Vs. Amarnath and another*** referred to supra observed as follows:-

37. But the question still remains as to what is the legal import of the expression 'error of law apparent on the face of the record'. Is it every error of law that can attract the supervisory jurisdiction of the High Court, to quash the order impugned? This court, as observed above, has settled the law in this respect by laying down that in order to attract such jurisdiction, it is essential that the error should be something more than a mere error of law; that it must be one which is manifest on the



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face of the record. In this respect, the law in India and the law in England, are, therefore, the same. It is also clear, on an examination of all the authorities of this Court and of those in England, referred to above, as also those considered in the several judgments of this Court, that the common-law writ, now called order of certiorari, which was also adopted by our Constitution, is not meant to take the place of an appeal where the statute does not confer a right of appeal. Its purpose is only to determine, on an examination of the record, whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. Mere formal or technical errors, even though of law, will not be sufficient to attract this extraordinary jurisdiction.

10. The Court further observed as follows:-

It is, thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the powers under Article 226 of the Constitution. Under Art 226, the power of interference may extend to quashing an impugned order on the



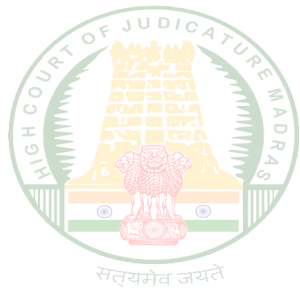
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ground of a mistake apparent on the face of the record. But under Art, 227 of the Constitution, the power of interference is limited to seeking that the tribunal functions within the limits of its authority. Hence, interference by the High Court, in these cases, either under Article 226 or 227 of the Constitution, was not justified.

11. Both *Waryam Singh and another Vs. Amarnath and another* as well as *Nagendra Nath Bora and another Vs. The Commissioner of Hills Division and Appeals, Assam and others* referred to supra are the judgments of Constitution Benches of the Hon'ble Supreme Court.

12. Mr.R.Viduthalai, learned Senior Counsel would also draw my attention to the judgment of *Surya Dev Rai Vs. Ram Chanderi Rai and others* reported in *2003 (6) SCC 675*, where the Hon'ble Supreme Court stated its conclusion in a nutshell. Mr.R.Viduthalai, learned Senior Counsel would draw my attention to point Nos.2, 4 and 6, which read as follows:-

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of



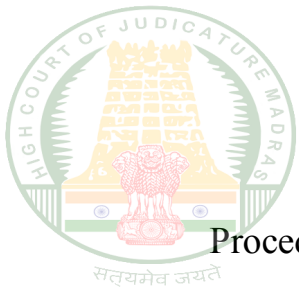
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revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

to contend that availability of remedy of appeal under Code of Civil



Procedure cannot be a total bar for invocation of the jurisdiction under

Article 226 of the Constitution of India.

13. In *Radhey Shyam and another Vs. Chhabi Nath and others* reported in *2015 (5) SCC 423*, a three Judge Bench of the Hon'ble Supreme Court approved the conclusions of the two Judge Bench in *Surya Dev Rai Vs. Ram Chanderi Rai and others* referred to supra, with reference to the power of the High Court under Article 227 of the Constitution of India.

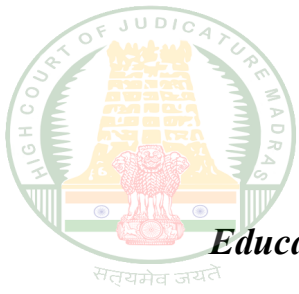
14. In *Shalini Syam Shetty and another Vs. Rajendra Shankar Patil* reported in *2010 (8) SCC 329*, the Hon'ble Supreme Court again pointed out the scope of the jurisdiction and also went on to hold that the High Court exercising power under Article 227 of the Constitution of India has got power to even substitute the order, by an order which the inferior Tribunal should have made. At paragraph 49 of the said judgment, the Hon'ble Supreme Court also pointed out the parameters under which the Court can exercise power under Article 227 of the Constitution of India, while doing so, the Hon'ble Supreme Court pointed out to the principles laid



down in *Waryam Singh and another Vs. Amarnath and another* referred to supra, and held that those parameters still hold good.

15. In the light of the above pronouncement of the Hon'ble Supreme Court, Mr.R.Viduthalai, learned Senior Counsel and Mr.V.Selvaraj, learned counsel would contend that it cannot be said that the Revisions under Article 227 of the Constitution of India, questioning the order which is made appealable under the Code of Civil Procedure is not maintainable.

16. It is one thing to say that the Revision is not maintainable and it is another to say that the High Court will not exercise the power of superintendence in view of the availability of alternative remedy. Even under Article 226 of the Constitution of India, the Hon'ble Supreme Court as well as this Court, have repeatedly held that availability of appeal remedy is not a blanket bar or total bar for invoking the constitutional remedy under Article 226 of the Constitution of India. Recently in *Virudhunagar Nadargal Dharma Paribalana Salai and others Vs. Tuticorin*



Educational Society and others reported in **2019 (9) SCC 538**, the Hon'ble

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Supreme Court had pointed out that the availability of an appellate remedy in terms of the provisions of CPC will have to be **construed as a near total bar**. In *L.Chandrakumar Vs. Union of India* reported in **1994 (2) SCC 401**, the Hon'ble Supreme Court had held that Articles 226 and 227 form part of the basic structure of the Constitution and the power of High Court under them cannot be abrogated even by a Constitutional Amendment.

17. From a reading of the above judgments which have been cited in the bar, it is clear, to my mind, that the jurisdiction under Article 227 of the Constitution of India is far more wider than the jurisdiction under Article 226 of the Constitution of India and the power of superintendence for the High Court can be used even to correct the errors which are patent or manifest. A meaningful reading of the above judgments of the Hon'ble Supreme Court including those of the constitution bench judgments in *Waryam Singh and another Vs. Amarnath and another* and *Nagendra Nath Bora and another Vs. The Commissioner of Hills Division and Appeals, Assam and others*, it is clear that a discretion to exercise a



constitutional power/ power of superintendence deposited in it under Article 227 of the Constitution of India is with a Court. It is one thing to say that the Court will not exercise such power under certain circumstances and another to say that a party cannot approach a Court espousing a grievance.

18. It is clear to my mind that in respect of applications or revisions invoking the constitutional power, the Court has to examine it and decide as to whether it is a proper case for exercising such power or the case should be relegated to the statutory Tribunal or civil Court, as the case may be. The Registry cannot raise objection as to the maintainability of the petition on the ground of availability of alternative remedy either under the Code of Civil Procedure or under any other statute.

19. In cases where the power of superintendence or the power to issue writ under Article 226 or 227 of the Constitution of India respectively is sought to be invoked, the availability of an alternative remedy is not a bar for an exercise either writ jurisdiction or jurisdiction under Article 227 of the Constitution of India. The constitutional Courts refrain from exercising the



jurisdiction vested in them under the Constitution, if an alternative remedy is available to the party approaching them, as a matter of self imposed restraint or as a matter of prudence and discipline. Once it is held that it is for the Court to decide whether it will or will not exercise the constitutional power, it follows that the Registry does not have the right to question the maintainability of such petition, on the ground of availability of alternative remedy.

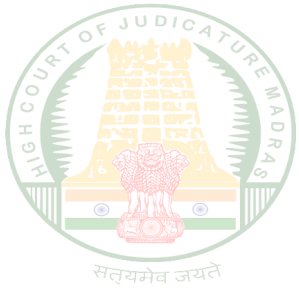
20. In view of the above, the objections of the Registry on the maintainability of these Revisions are over ruled and I conclude that the Revisions are maintainable. Registry is directed to number both the Revisions and post '**for admission**' on **17.12.2021**. It is made clear that in future, the Registry shall not raise objections on the ground of maintainability of any cases, where the litigant seek to invoke the supervisory jurisdiction under Article 227 of the Constitution of India.

16.12.2021

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R.SUBRAMANIAN, J.

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