

Kerala High Court

K.P.George vs Cyril Mar Baselious on 25 June, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 17878 of 2008(C)

1. K.P.GEORGE, S/O.PATHROSE, AGED 56
... Petitioner

Vs

1. CYRIL MAR BASELIOUS, METROPOLITAN,
... Respondent

2. KAIKKARAN (TRUSTEE)

For Petitioner :SRI.K.RAMACHANDRAN

For Respondent :SRI.P.K.BEHANAN

The Hon'ble MR. Justice M.SASIDHARAN NAMBIAR

Dated :25/06/2008

O R D E R

M.SASIDHARAN NAMBIAR, J.

W.P (C) Nos. 17878 & 18880 of 2008

Dated this the 25th June, 2008.

J U D G M E N T

W.P.(C) No.17878/2008 is filed by the second
defendant in O.S.No.361/2006, on the file of Munsiff Court,

Chavakkad, challenging Ext.P3 order passed by the learned Munsiff in I.A.No.57/2008. That was an application filed for appointment of a Commission to conduct election to St.George Church Edavaka, Thozhiyoor, as provided under the bye-law of Malabar Independent Syrian Saba. O.S.No.361 of 2006 was filed by the petitioners in W.P. (C) No.18880/2008. The suit was for mandatory injunction directing defendants to hand over all the election records pertaining to St.George Church Edavaka, Thozhiyoor, including the previous list, subscriptions books of account showing remittance of subscription amount, and also to hand over the function and charges of Secretary and Treasurer by vacating the Edavaka committee office and handing over all other documents including account books to the first petitioner.

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2. W.P.(C) No.18880/2008 was filed for a direction to the learned Munsiff to dispose Exts.P2 and P3 petitions (I.A.Nos.1465/2006 & 1466/2006), the former is an application for an order of temporary injunction, and the latter, an application for a temporary mandatory injunction to vacate the Edavaka committee office and to hand over the records to the first petitioner. The grievance of the petitioners is that even though petitions were filed in April, 2006, learned Munsiff did not pass any orders, though I.A.No.57/2008 was subsequently disposed. In such circumstances, W.P.(C) No.18880/2008 is allowed, Munsiff is directed to dispose Exts.P2 and P3 petitions, as expeditiously as possible, at any rate, within 30 days from the date of receipt of a copy of this judgment.

3. Under Ext.P3 order in I.A.No.57/2008, Munsiff did not appoint a Commission as sought for. The learned counsel appearing for the petitioner in W.P.(C) No.17878/2008 pointed out that though plaintiffs have instituted similar suits against three other Edavaka's, and order of injunction was not granted by the trial court and in C.M.A.No.184/2006 filed by plaintiffs, under Ext.P4 order, a Commission was appointed to conduct the election, and in such circumstances, Munsiff should have appointed a Commission to conduct the election.

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4. The learned counsel appearing for the plaintiffs- respondents pointed out that facts are different, and as far as St.George Church Edavaka, Thozhiyoor, is concerned, the right of the petitioners in W.P.(C) No.17878/2008 to continue in office itself is challenged and that is the question which is to be settled before conducting the election.

5. The conducting of an election could only be subsequent to the preparation of the voters list as per the bye-law. For that purpose, Munsiff has to decide whether plaintiffs are entitled to an order of injunction sought for in Exts.P2 and P3 petitions. In such circumstances, W.P.(C) No.17878/2008 is dismissed. It is made clear that Ext.P3 order will not prevent petitioner in applying for appointment of a Commission at a later stage and the order will not preclude the court from appointing a Commission, if it is necessary for conducting just and fair election. Munsiff has to decide Exts.P2 and P3 applications untrammelled by any observations in Ext.P3 order in I.A.No.57/2008.

M.SASIDHARAN NAMBIAR, JUDGE nj.