

ITEM NO.13

Court 6 (Video Conferencing)

SECTION X

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Writ Petition (Civil) No.428/2021

JOHN PAILY & ORS.

Petitioner(s)

VERSUS

THE STATE OF KERALA & ORS.

Respondent(s)

(With appln.(s) for IA No.49382/2021-GRANT OF INTERIM RELIEF and IA No.49384/2021-EXEMPTION FROM FILING O.T. and IA No.49383/2021-PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 16-04-2021 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Ms. Cherry Gupta,  
Adv. Mr. Vishnu Sharma, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following  
ORDER

- 1 The petition under Article 32 of the Constitution is a complete abuse of the process. The reliefs which have been sought in the petition are extracted below :

“(i) Issue a writ, order or direction in the nature of a mandamus or any other appropriate writ, order or directions, to set up an independent Tribunal comprising of retired High Court judges who can look into the claims of each parish Church to

determine which faction/denomination must have control over each such Church.

- (ii) Issue a writ, order or direction in the nature of a mandamus or any other appropriate writ, order or directions, to direct that the decisions of the Independent Tribunal set up in terms of Prayer Clause (i) are executed by handing over of the management of concerned Church to the denomination constituting majority, or in the alternative, direct such Independent Tribunal to partition all disputed Churches and their properties equitably.
- (iii) Issue a writ, order or direction in the nature of mandamus to the State of Kerala for passing an appropriate law to protect the Churches belonging to members of the Patriarch faction/denomination and the exercise of their religious freedom;
- (iv) Issue a writ, order or direction in the nature of a mandamus or any other appropriate writ, order or directions, to the State of Kerala to enforce and protect the fundamental rights of the Petitioners guaranteed under Articles 14, 21, 25 & 26 of the Constitution of India;
- (v) Issue a declaration to the effect that no previous judgment of this Hon'ble Court be allowed to operate against the belief of Petitioners and members of the religious denomination unless the same is not protected by Articles 25 and 26 of the Constitution of India;
- (vi) Issue a declaration to the effect that Petitioners and members belonging to the same religious denomination have the right to practice and profess their religious beliefs;



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- 2 A mandamus cannot be issued by this Court for setting up an adjudicatory body or tribunal. Entry 11A of the Concurrent List of the Seventh Schedule to the Constitution deals with, *inter alia*, “constitution and organization of all courts, except the Supreme Court and the High Courts”. Having due regard to the provisions of Articles 245 and 246 of the Constitution, no such mandamus can be issued by this Court. Nor can a direction be issued by this Court to the legislature of a State to enact a law. The purpose of the petition, as is evidenced by the prayer (v) extracted above, is to obtain a direction that no previous judgment of this Court on the subject raised should operate. As the petitioners have themselves indicated in the course of the synopsis, the judgment of this Court in ***K S Varghese vs Saint Peter’s and Saint Paul’s Syrian Orthodox Church*** (2017) 15 SCC 333, is the reason for instituting the writ petition under Article 32 since the petitioners consider themselves to be aggrieved by the judgment. The remedy of a party which is aggrieved by a judgment and order of this Court cannot certainly lie by instituting a petition under Article 32 of the Constitution. Such a petition would not be maintainable. We, therefore, decline to grant an adjournment and have come to the conclusion that on the face of the prayers as they stand, the petition cannot be entertained.

- 3 The Petition is accordingly dismissed.

- 4 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)  
A.R. –cum–P.S.

(SAROJ KUMARI GAUR)  
Court Master