

CASE NO.:  
Appeal (civil) 1634 of 2006

PETITIONER:  
P.R. Murlidharan & Ors

RESPONDENT:  
Swami Dharamanda Theertha Padar & Ors

DATE OF JUDGMENT: 10/03/2006

BENCH:  
P.K. BALASUBRAMANYAN

JUDGMENT:  
J U D G M E N T  
( @ SPECIAL LEAVE PETITION (CIVIL) NO. 22268 OF 2004)

P.K. BALASUBRAMANYAN, J.

1. I respectfully agree with the reasoning and conclusion of my learned Brother and agree that the appeal has to be allowed and the decision of the High Court set aside.

2. A Writ Petition under the guise of seeking a writ of mandamus directing the police authorities to give protection to a Writ Petitioner, cannot be made a forum for adjudicating on civil rights. It is one thing to approach the High Court, for issuance of such a writ on a plea that a particular party has not obeyed a decree or an order of injunction passed in favour of the Writ Petitioner, was deliberately flouting that decree or order and in spite of the petitioner applying for it, the police authorities are not giving him the needed protection in terms of the decree or order passed by a court with jurisdiction. But, it is quite another thing to seek a writ of mandamus directing protection in respect of property, status or right which remains to be adjudicated upon and when such an adjudication can only be got done in a properly instituted civil suit. It would be an abuse of process for a Writ Petitioner to approach the High Court under Article 226 of the Constitution of India seeking a writ of mandamus directing the police authorities to protect his claimed possession of a property without first establishing his possession in an appropriate civil court. The temptation to grant relief in cases of this nature should be resisted by the High Court. The wide jurisdiction under Article 226 of the Constitution of India would remain effective and meaningful only when it is exercised prudently and in appropriate situations.

3. In the case on hand, various disputed questions arose based on a deed of trust and the facts pleaded by the Writ Petitioner and controverted by the other side. The High Court should have normally directed the Writ Petitioner to have his rights adjudicated upon, in an appropriate suit in a civil court. The fact that a Writ Petitioner may be barred from approaching the civil court, in view of Order IX Rule 9 of the Code of Civil Procedure, or some other provisions, is no ground for the High Court to take upon itself, under Article 226 of the Constitution of

India, the duty to adjudicate on the civil rights of parties for the purpose of deciding whether a writ of mandamus could be issued to the police authorities for the protection of the alleged rights of the Writ Petitioner. A writ of mandamus directing the police authorities to give protection to the person of a Writ Petitioner can be issued, when the court is satisfied that there is a threat to his person and the authorities have failed to perform their duties and it is different from granting relief for the first time to a person either to allegedly protect his right to property or his right to an office, especially when the pleadings themselves disclose that disputed questions are involved. My learned Brother has rightly pointed out that the High Court was in error in proceeding to adjudicate on the rights and obligations arising out of the trust deed merely based on the affidavits and the deed itself. I fully agree with my learned Brother that the High Court should not have undertaken such an exercise on the basis that the right of the Writ Petitioner under Article 21 of the Constitution of India is sought to be affected by the actions of the contesting respondents and their supporters and that can be prevented by the issue of the writ of mandamus prayed for.

4. A writ for "police protection" so-called, has only a limited scope, as, when the court is approached for protection of rights declared by a decree or by an order passed by a civil court. It cannot be extended to cases where rights have not been determined either finally by the civil court or, at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order.

5. Having said this, I agree with my learned Brother and allow the appeal, set aside the order of the High Court and dismiss the Writ Petition filed by the first respondent .