

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF SEPTEMBER 2022

PRESENT

THE HON'BLE MR. ALOK ARADHE
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE S. VISHWAJITH SHETTY

W.P. NO.25124 OF 2016 (GM-RES)

BETWEEN:

1. SRI. EDURKALA ISHWARA BHAT
AGED ABOUT 69 YEARS
S/O Y. SHAM BHAT
NO.1791, DHYANA, 1ST MAIN ROAD
PIPELINE ROAD, T. DASARAHALLI
BENGALURU - 560057.
2. SRI. JAIKRISHNA A.K.
AGED ABOUT 50 YEARS
S/O A. KESHAVA BHAT
NO.61, 5TH MAIN ROAD
POSTAL COLONY, SANJAYANAGAR
BENGALURU - 560094.
3. SMT. MAYURI GAJANANA UPADHAYAYA
AGED ABOUT 51 YEARS
W/O GAJANANA SUBRAMANYA UPADHYAYA
NO.19, 12TH CROSS
VIJAYANAGAR PIPELINE
NEAR TEJA HOME, VIJAYANAGAR
BENGALURU- 560023.

4. SRI. KABSE ASHOKMURTHY
AGED ABOUT 49 YEARS
S/O GANAGA NAIK
SOORANAGADDE, J P NAGARA
AT POST SAGAR, SHIMOGA DISTRICT.
5. SRI. SHANKAR BHAT G
AGED ABOUT 50 YEARS
S/O NARAYANA BHAT .K
GUNDIGADDE HOUSE, BELIARE POST
SULLIA TALUK
DAKSHINA KANNADA - 574212.
6. SRI. K.T. MAHABALAGIRI HEGDE
AGED ABOUT 69 YEARS
S/O SRI. THIMMAPPA HEGDE
R/AT KHANDIKA VILLAGE & POST
SAGARA TALUK
SHIVAMOGGA DISTRICT - 577401.

... PETITIONERS

(BY MR. S.S NAGANAND, SR. COUNSEL A/W
MR. S.G. PRASHANTH MURTHY, ADV., FOR
MRS. SUMANA NAGANAND, ADV.,)

AND:

1. SRI. RAGHAVESHWARA BHARATHI SWAMIJI
EARLIER KNOWN AS SRI HARISH SHARMA
AGED ABOUT 42 YEARS
S/O SRI. SRINIVASA BHAT
RESIDING AT RAMASHRAMA
NO.2A, J P ROAD
GIRINAGARA I STAGE
BENGALURU - 560085.
2. SRI. RAMACHANDRAPURA MATH
EARLIER KNOWN AS RAGHOTTAMA MATH
RAMASHRAMA, NO.2A
J P ROAD, GIRINAGARA I STAGE

BENGALURU - 560085
REPRESENTED BY ITS CEO.

3. THE STATE OF KARNATAKA
DEPARTMENT OF REVENUE
(MUZARAI DEPARTMENT)
VIKASA SOUDHA
DR. B.R. AMBEDKAR ROAD
BENGALURU - 560001.

4. THE UNION OF INDIA
DEPT OF HOME AFFAIRS
NORTH BLOCK, RAJPATH
NEWDELHI - 110001
REPRESENTED BY ITS SECRETARY.

5. THE CHIEF COMMISSIONER OF
INCOME TAX, KARNATAKA
C.R. BUILDINGS, QUEENS ROAD
BENGALURU - 560001.

... RESPONDENTS

(BY MR. UDAYA HOLLA, SR. COUNSEL FOR
MR. MANMOHAN P.N. ADV., FOR R1 & R2
MR. R. SUBRAMANYA, AAG A/W
MR. S.S. MAHENDRA, AGA FOR R3
MR. H. SHANTHIBHUSHAN, ASG FOR R4
MR. E.I. SANMATHI, ADV., FOR R5)

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THIS W.P. IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT TO THE R-3 TO EXERCISE ITS EXECUTIVE POWER TO REGULATE THE R-2 AND ALL OTHER MATHS IN THE STATE PENDING THE PASSING ENACTMENT OF A REGULATORY STATUE BY THE STATE LEGISLATURE. ALTERNATIVE TO FRAME A SCHEME TO REGULATE MATHS IN GENERAL AND IN THE PRESENT CONTEXT TO REGULATE THE R-2 HAVING REGARD TO THE MISUSE AND ABUSE OF POWERS BY THE

R-1. DIRECT REMOVING THE R-1 FROM THE OFFICE OF MATHADIPATHI/MAHANT OR HEAD OF THE PEETHA OF THE R-2 MATH/INSTITUTION AND DIRECT PROSECUTION FOR MISUSE AND ABUSE OF THE OFFICE & ETC.

THIS W.P. HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 22.09.2022, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **ACTING CHIEF JUSTICE.**, MADE THE FOLLOWING:

ORDER

The petitioners claim to be devotees of Sri.Ramachandrapura Math (hereinafter referred to as 'the Math' for short). The petitioners have filed this petition *pro bono publico* seeking the following reliefs:

"a. An appropriate writ/direction to the 3rd respondent to exercise its executive power to regulate the 2nd respondent and all other Maths in the state pending the passing/enactment of a regulatory statute by the State Legislature. Alternatively, to frame a scheme to regulate Maths in general and in the present context to regulate the 2nd Respondent having regard to the misuse and

abuse of powers by the 1st respondent.

b. An appropriate writ/direction removing the 1st respondent from the office of Mathadipathi/Mahant or head of the Peetha of the 2nd Respondent Math/Institution and direct prosecution for misuse and abuse of the office;

c. To appoint a committee comprising of eminent devotees, representatives /officials of the government, retired Judge/s of the Hon'ble Supreme Court or this Court who would suggest the successor/Peethadipathi to the 2nd Respondent and to manage/ administer the affairs of the 2nd Respondent till the successor takes charge;

d. To direct the 6th respondent to order investigation into affairs of the 1st and 2nd Respondents regarding evasion of tax and other offences under the Tax legislations and

initiate action against concerned persons;

e. To monitor all investigations regarding complaints/offences lodged and reported till now and that may be lodged in future against the 1st Respondent and in relation to the affairs of the 2nd Respondent and anything incidental or connected thereto,

f. Pass such other order/s as may be necessary in the peculiar facts and circumstances of the case and in the interest of justice and equity."

2. Facts giving rise to filing of these petitions in nutshell are that the Math was established in 8th Century and was known as Raghottama Math and is involved in propagation of tenets of Sanathan Dharma and Indian Philosophy and is an institution propagating social, religious philosophical and charitable issues. The Math is headed by a

Mathadhipathi viz., respondent No.2 who is the head of spiritual fraternity and has to perform religious of a religious teacher. It is his duty to practice and propagate the religious tenets. The affairs of Math / Religious institutions were being regulated by Mysore Religious and Charitable Institutions Act, 1927. The said Act was repealed by Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 (hereinafter referred to as 'the 1997 Act' for short). The 1997 Act was enacted in view of long standing public demand to bring about a uniform law to provide for regulation of charitable endowments and Hindu religious institutions in the State. Section 1(4) of the 1997 Act which is relevant for the purpose of the controversy involved in this petition is extracted below for the facility of reference:

"1(4) It shall apply to, all religious institutions or charitable endowments notified under Section 23. Section 53 and

Chapter VII shall apply to all religious institutions endowments other than those notified under Section 23.

Provided that it shall not apply to a math or temple attached to or managed by math.

Explanation: For the purpose of this Act a mutt means a religious institution presided over by a person whose principal duty is to engage himself in the teaching and propagation of religion, teachings and philosophy of the denomination, sect or sampradaya to which the mutt belongs and in imparting religious instruction and training and rendering spiritual service or who exercises or claims to exercise spiritual headship over a body of disciples and includes any place or places of religious worship, instruction or training which are pertinent to the institution."

3. Thus, the 1997 Act does not apply to a Math or Temple attached to or managed by Math. The

respondent No.1 took over as Matadhipathi of the Math from 18.04.1999. A division bench of this court vide judgment in **SRI.SAHASRA LINGESHWARA TEMPLE v. STATE OF KARNATAKA AND ANOTHER¹**, struck down the Act as unconstitutional. Against the said judgment of Division Bench of this court, a Special Leave Petition has been filed before Hon'ble Supreme Court in which judgment rendered by a division bench of this court has been stayed. The Act therefore, has revived.

4. The Act was amended by Act No.27 of 2011 with effect from 04.05.2011. Section 2(19-A) was inserted by which, expression "Math" was defined. Section 2(19-A) reads as under:

"(19-A) "Math" means a religious institution presided over by a person whose principal duty is to engage himself, in teaching and

¹ (2007) 1 KLJ 1

propagation of religion, teachings and philosophy of the denomination, sect or sampradaya to which the Math belongs and in imparting religious instruction and training and rendering spiritual service who exercises or claims to exercise spiritual headship over a body of disciples and includes any place or places of religious worship, instruction or training which are pertinent to the institution including religious institutions attached either religiously or administratively to the Maths."

5. On 26.08.2014, one Smt. Premalatha filed a complaint against respondent No.1, in pursuance of which First Information Report on 28.08.2014 was lodged against respondent No.1 vide Crime No.164/2014. Thereafter, her brother-in-law namely, Shyam Prasad Shastry committed suicide on 31.08.2014. The respondent No.1 filed a writ petition

namely, W.P.No.43825/2014 seeking quashment of the complaint as well as First Information Report registered in Crime No.164/2014. The said writ petition was dismissed by an order dated 09.10.2014.

6. One T.T.Hegde, on or about 18.03.2016, claiming to be a devotee of the Math filed a petition under Section 92 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code' for short). Thereafter, one Prashanth Kumar M.B and Lokesh M. also filed a petition under Section 92 of the Code for grant of leave to file a suit seeking removal of respondent No.1 from the seat of Peetadhipathi / Mahant of the Math and to appoint a new Peetadhipathi / Mahant. The aforesaid persons also sought the relief of rendition of accounts of the Math as well as a decree for permanent injunction restraining respondent No.1 from representing as Peetadhipathi / Mahant of the Math.

7. By an order dated 31.03.2016, the respondent No.1 was discharged in respect of an offence lodged against him in pursuance of the complaint made by Smt. Premalatha.

8. The petition under Section 92 of the Code filed by Prashanth Kumar M.B and Lokesh M. was rejected by an order dated 17.10.2017. The petition under Section 92 of the Code filed by Mr.T.T.Hegde was dismissed for non-prosecution on 30.11.2017.

9. The petitioners thereafter claiming to be the devotees of the Math have filed this petition on 25.04.2016, inter alia on the ground that respondent No.1 has committed malpractices and has rendered himself ineligible to continue as Peetadhipathi / Mahant. A Division Bench of this Court, while issuing notice, passed the following order on 28.04.2016:

"Liberty is granted to the writ petitioner(s) to make a representation

to the Chief Secretary, Government of Karnataka, ventilating their grievances. The Chief Secretary is requested to consider and dispose of such representation after giving opportunity of hearing to all the concerned in the Mather and uninfluenced by the pendency of these writ petitions.

Post these writ petitions one week after the reopening of the court after annual vacation 2016."

10. Thereafter, petitioner No.1 and petitioner No.2 submitted a representation on 30.04.2016 to the Chief Secretary, Government of Karnataka, in which *inter alia* a prayer was made to restrain respondent No.1 from discharging duties as Peetadhipathi of the Math. The aforesaid petitioners also requested the Chief Secretary to formulate a scheme for superintendence of functioning of all Maths in the

State of Karnataka including the procedure for appointment, suspension and removal of the pontiffs and his successors in exercise of the powers under Article 162 of the Constitution. The aforesaid petitioners also sought a special audit and investigation into the affairs of the Math. The Chief Secretary, by an order dated 23.05.2017, directed to conduct an enquiry into the allegations made by petitioner Nos.1 and 2.

11. The respondent Nos.1 and 2 challenged the order in W.P.No.28337/2017 in a writ petition. The learned Single Judge, by an order dated 25.07.2017, stayed the operation of the order dated 23.05.2017 passed by the Chief Secretary. The aforesaid interim order was challenged in W.A.No.4699/2017 before a Division Bench of this Court. The respondent Nos.1 and 2 filed an interlocutory application namely,

I.A.No.2/2016 seeking, recall of the order dated 28.04.2016.

12. A Division Bench of this Court, by an order dated 27.06.2019, without deciding the issue of maintainability of the appeal, dismissed I.A.No.2/2016 seeking recall of the order dated 28.04.2016 *inter alia* on the ground that no ground is made out to allow the same. Thereafter, by another order dated 25.11.2019, it was *inter alia* held that the order passed by the Chief Secretary dated 23.05.2017 is challenged in W.P.No.28337/2017. Therefore, a Division Bench of this Court directed to list W.P.No.28337/2017 along with this writ petition.

13. Learned Single Judge by an order dated 29.12.2021 passed in Criminal Revision Petition No.638/2016 and Criminal Revision Petition No.550/2016 upheld the order of discharge passed by the Trial Court dated 31.03.2016. The orders dated

27.06.2019 and 25.11.2019 passed by Division Bench of this Court were assailed by the respondent Nos.1 and 2 before Hon'ble Supreme Court in Civil Appeal Nos.5531-5538/2022. The aforesaid Special Leave Petition was disposed of by Hon'ble Supreme Court by an order dated 22.08.2022. The relevant extract of the order reads as under:

*"Since the matters (*sic) concerning maintainability of the writ petition would go to the root of the Matter and consequential directions issued by the Chief Secretary would depend squarely on such issue of maintainability, we direct as under:*

"(a) The order dated 27.06.2019 I set aside, and I.A. No.2 of 2016 is restored to the file of the High Court to be disposed of afresh on merits.

(b) Till the disposal of I.A.No.2 of 2016, the effect and operation of

the order dated 28.04.2016 shall remain stayed.

(c) Consequently, the consideration bestowed by the Chief Secretary and the resultant orders by him shall also not be given any effect till the Mather regarding maintainability of the writ petition is decided by the High Court.

(d) All other rights and contentions of the parties are left open.

(e) In order to facilitate early disposal of the Mathers, the parties shall appear before the High Court on 05.09.2022.

9. The instant Civil Appeals are thus allowed without any order as to costs.

10. Any observation made by this Court shall not be taken to be

reflection on merits of the rival contentions and submissions."

14. In the aforesaid factual background, this writ petition arises for consideration. We have heard the submissions of learned Senior Counsels for the parties and learned Additional Advocate General on the maintainability of the appeal and with consent of learned Senior Counsels and as well as learned counsel for the parties on merits as well.

15. The learned Senior Counsel for the petitioners, at the outset, clarified that the petitioners are not seeking any mandamus to the Legislature to enact a law. It is further submitted that there is a vacuum with regard to an effective Legislation in relation to curbing and taking remedial action in respect of Mathers pertaining to Maths and Mathadipathis. It is submitted that inaction on the part of the Government cannot be sustained. It is

contended that executive powers under Article 162 of the Constitution of India can be exercised to frame a scheme in respect of Maths. It is also urged that decision on a petition under Section 92 of the Code does not affect the jurisdiction of this court under Article 226 of the Constitution of India. It is also urged that there is a need to evolve a mechanism to deal with the issue of administration of Maths in the State of Karnataka. Learned Senior counsel has also taken us through the averments made in the writ petition as well as several documents and has relied on decisions in the cases of **SRI SAHASRA LINGESHWARA TEMPLE, UPPINANGADY, PUTTUR TALUK, DAKSHINA KANNADA AND OTHERS v. STATE OF KARNATAKA & ANOTHER², RAI SAHIB RAM JAWAYA KAPUR AND OTHERS v. STATE OF PUNJAB³, VIDYA MANOHARA THEERTHA**

² (2007) 1 Kant LJ 1

³ AIR 1955 SC 549

SWAMIGALU, PEETHADIPATHY, VYASARAJA MUTT (SOSALE), T.NARASIPURA, MYSORE DISTRICT v. STATE OF KARNATAKA AND OTHERS⁴, MA. GOUTHAMAN AND ORS. v. THE STATE OF TAMIL NADU & ORS.⁵, ADI SAIVA SIVACHARIYARGAL NALA SANGAM AND OTHERS v. GOVERNMENT OF TAMIL NADU AND ANOTHER⁶ and MEGHWAL SAMAJ SHIKSHA SAMITI v. LAKH SINGH AND OTHERS⁷.

16. On the other hand, learned Senior Counsel for respondent Nos.1 and 2 submitted that Section 1(4) of the Act specifically excludes Maths from the purview of the Act and therefore, the petitioners cannot seek a direction to the State of Karnataka to exercise its executive power to regulate the Maths in question. It is also urged that the fact of filing of the

⁴ (2013) 2 Kant LJ 466

⁵ MANU/TN/1546/2012

⁶ (2016) 2 SCC 725

⁷ (2011) 11 SCC 800

petition under Section 92 of the CPC has been suppressed by the petitioners. It is also pointed out that another petition filed under Section 92 of the CPC by two devotees has been dismissed on 17.10.2017. It is also pointed out that in respect of an offence under Section 376, respondent No.1 has already been discharged whereas, in respect of another complaint pertaining to suicide, a Bench of this Court granted stay. It is also urged that there is no element of public interest involved in the petition and the petition has been filed out of vengeance against respondent Nos.1 and 2.

17. In support of aforesaid submissions, reliance has been placed on the decisions in the cases of ***B.N.NAGARAJAN AND OTHERS v. STATE OF MYSORE AND OTHERS***⁸, ***ACCOUNTANT GENERAL, STATE OF MADHYA PRADESH v. S.K.DUBEY AND***

⁸ AIR 1966 SC 1942

ANOTHER⁹, HOPE TEXTILES LTD AND ANOTHER v. UNION OF INDIA AND OTHERS¹⁰ and VIVEK KRISHNA vs UNION OF INDIA AND OTHERS¹¹.

18. Learned Additional Advocate General submitted that no representation has been submitted to the State Government and the State Legislature has consciously omitted the Maths from the purview of the Act. It is also urged that in order to seek a writ of mandamus, a legal right in corresponding legal duty has to be demonstrated. The petitioners have failed to point out any such legal right. It is also urged that court cannot compel an authority to act contrary to the statutory provisions and cannot direct the State to enact a law. The writ petition is liable to be dismissed. In support of aforesaid submissions, reliance has been placed on decisions in ***B.N.NAGARAJAN AND OTHERS VS. STATE OF***

⁹ (2012) 4 SCC 578

¹⁰ 1995 SUPP (3) SCC 199

MYSORE AND OTHERS¹², ACCOUNTANT GENERAL, STATE OF MADHYA PRADESH v. S.K.DUBEY AND ANOTHER¹³, HOPE TEXTILES LTD. AND ANOTHER VS. UNION OF INDIA AND OTHERS ¹⁴ and VIVEK KRISHNA VS. UNION OF INDIA AND OTHERS INDIA¹⁵.

19. We have considered the submissions made by learned counsel for the parties and have perused the records. The 1997 Act was struck down by a division bench of this Court in W.A. No.3440/2005. In Civil Appeal No.5924/2008, the Hon'ble Supreme Court of India has stayed the operation of the judgment of the Division Bench of this Court and has permitted to enforce the provisions of the Act, except provision of Section 25 of 1997. The State Government thereafter constituted a High Level

¹¹ 2022 SCC ONLINE SC 1040

¹² AIR 1966 SC 1942

¹³ (2012) 4 SCC 578

¹⁴ (1995) SUPP (3) SCC 199

¹⁵ 2022 SCC ONLINE SC 1040

Committee to examine the implementation of the judgment and the issue in detail. The said High Level Committee submitted its report and on consideration of the report, the State Government amended the 1997 Act by an Act No.27 of 2011. The 1997 Act does not apply to the provisions of the Maths. There is a conscious omission on the part of the Legislature in keeping the Maths out of the purview of the Act, which is also evident from statement of objects and reasons of Karnataka Act No.27 of 2011 namely the Amendment Act. The relevant extract of the statement of objects and reasons reads as under:

"The Government had constituted a high level committee to examine the implication of the judgment and the issue in detail. The High Level Committee had submitted its report. Having considered the report of the High Level Committee and the directions of

the Supreme Court, it is considered necessary to amend the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 for the following, namely:-

(1) The maths and temples attached to the maths are kept out of the purview of the Act, as the maths are headed and managed by mathadipathis."

Thus, the legislative intention to exclude the Maths is manifest from the statement of objects and reasons of the Amendment Act.

20. The hall mark of our Constitution is to build a society to attain justice and erase inequities flowing from religion, gender, caste and privileges. In this background, Articles 25 to 30 are incorporated in the Constitution. Article 25(1) of the Constitution guarantees the freedom of conscience, the right to freely profess, practice and propagate religion subject

to public order, morality and health. Article 26 confers the right to establish institution for religious or charitable purpose and to maintain its own affairs in the matter of religion, on every religious denomination, subject to public order, morality and health. Article 26 of the Constitution reads as under:

"26. Freedom to manage religious affairs subject to public order, morality and health, every religious denomination or any section thereof shall have the right:

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law."

The scope and ambit of Article 26 was considered by a seven Judge Bench of Supreme Court in ***THE COMMISSIONER, HINDU RELIGIOUS ENDOWMENTS MADRAS v. SRI LAKSHMINDRA THIRTHA SWAMIAR OF SRI SHIRUR MUTT***¹⁶ and it has been held that Article 26 contemplates not merely a religious denomination but also a section thereof, the Math or the spiritual fraternity represented by it can legitimate the come within the purview of Article 26. Therefore, a Math is entitled to protection of Article 26 of the Constitution of India.

21. It is trite law that power under Article 162 of the Constitution of India is co-terminus with legislative power and in the absence of any statutory provision, power under Article 162 of the Constitution of India can be exercised. It is equally well settled legal proposition that if there is an alternative remedy,

¹⁶ AIR 1954 SC 282

jurisdiction of this Court under Article 226 of the Constitution of India shall not ordinarily be exercised specially in a case where right is created by the statute which itself provides for a remedy. In such a case, an aggrieved person should resort to the remedy provided to him under the statute. [See: **RADHA KRISHNA INDUSTRIES VS. STATE OF HP**¹⁷].

22. The scope of a public interest litigation in relation to religious institutions in respect of which a particular legislation provides for a mechanism for adjudication of the disputes has been dealt with by Hon'ble Supreme Court in **JAIPUR SHAHAR HINDU VIKAS SAMITHI v. STATE OF RAJASTHAN & OTHERS**¹⁸. Para 47 and relevant extract of para 48 of the aforesaid judgment, which is relevant for the purpose of controversy involved in this appeal, reads as under:

¹⁷ (2021) 6 SCC 771

¹⁸ (2014) 5 SCC 530

"47. The scope of Public Interest Litigation is very limited, particularly, in the matter of religious institutions. It is always better not to entertain this type of Public Interest Litigations simply on the basis of affidavits of the parties. The public trusts and religious institutions are governed by particular legislation which provide for a proper mechanism for adjudication of disputes relating to the properties of the trust and their management thereof. It is not proper for the Court to entertain such litigation and pass orders. It is also needless to mention that the forums cannot be misused by the rival groups in the guise of public interest litigation.

48. We feel that it is apt to quote the views expressed by this Court in Guruvayoor Devaswom Managing Committee (supra) wherein this Court observed :

“It is possible to contend that the Hindus in general and the devotees visiting the temple in particular are interested in proper management of the temple at the hands of the statutory functionaries. That may be so but the Act is a self-contained Code. Duties and functions are prescribed in the Act and the rules framed thereunder. Forums have been created thereunder for ventilation of the grievances of the affected persons. Ordinarily, therefore, such forums should be moved at the first instance. The State should be asked to look into the grievances of the aggrieved devotees, both as parens patriae as also in discharge of its statutory duties.

... .. The Court should be circumspect in entertaining such public interest litigation for another reason. There may be dispute amongst the devotees as to what

practices should be followed by the temple authorities. There may be dispute as regard the rites and rituals to be performed in the temple or omission thereof. Any decision in favour of one sector of the people may hurt the sentiments of the other. The Courts normally, thus, at the first instance would not enter into such disputed arena, particularly, when by reason thereof the fundamental right of a group of devotees under Articles 25 and 26 may be infringed. Like any other wing of the State, the Courts also while passing an order should ensure that the fundamental rights of a group of citizens under Articles 25 and 26 are not infringed. Such care and caution on the part of the High Court would be a welcome step."

23. Now, we proceed to examine whether in the obtaining factual matrix, a case has been made out in

exercise of extraordinary discretionary jurisdiction under Article 226 of the Constitution of India, to issue a writ of mandamus to direct the State Government to frame a scheme to regulate the affairs of respondent No.2 Math.

24. The respondent No.1 has been appointed as mathadipathi of respondent No.2 trust on 18.04.1999. Thereafter, since the year 2014, there has been successive attempts to remove respondent No.1 from the office of mathadipathi / mahant. On 26.08.2014, a complaint was lodged by one Smt. Premalatha, which resulted in lodging of first information report against respondent No.1. By an order dated 31.03.2016, the respondent No.1 was discharged in respect of aforesaid offence. The said order has been affirmed by a learned Single Judge of this Court by an order dated 29.12.2021 in Criminal Petition No.638/2016 and Criminal Petition No.550/2016.

25. One T.T. Hegde on or about 18.03.2016 filed a petition under Section 92 of the Code of Civil Procedure which was dismissed on 30.11.2017. Another petition was filed by two of the devotees, namely Prashanth Kumar L.B. and Lokesh .N under Section 92 of the Code of Civil Procedure which was dismissed by an order dated 17.10.2017. Similarly, in respect of offence of suicide, proceeding has been stayed by a bench of this Court and the matter is subjudice.

26. In the peculiar fact situation of the case, this Court is not inclined to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India and to issue a writ of mandamus to direct the State Government to exercise its power under Article 162 of the Constitution of India, to frame a scheme for administration of the Maths. The Legislature has expressly excluded the Maths and Temples attached

to the Maths, as they are headed and managed by mathadipathis. In any case, the petitioners have an alternative efficacious remedy under Section 92 of the Code of Civil Procedure. Therefore, we are not inclined to exercise the extraordinary discretionary jurisdiction under Article 226 of the Constitution of India, and therefore, writ petition is held to be not maintainable.

27. In view of aforesaid conclusion recorded by us, no orders are necessary to be passed on I.A.No.2/2016, an application seeking recall of the order dated 24.04.2003, by which the petitioner was permitted to submit a representation to Chief Secretary, Government of Karnataka.

In view of preceding analysis, we do not find any merit in the writ petition. However, liberty is reserved to the petitioners to take recourse to the remedy provided under Section 92 of the Code.

In view of disposal of the main petition itself, pending I.As do not survive for consideration, the same stand disposed of. The interim order stands vacated.

With the aforesaid liberty, the petition is disposed of.

**Sd/-
ACTING CHIEF JUSTICE**

**Sd/-
JUDGE**

ss