



WA No.1498 of 2025

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2025:KER:63425

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

FRIDAY, THE 22ND DAY OF AUGUST 2025 / 31ST SRAVANA, 1947

WA NO. 1498 OF 2025

AGAINST THE JUDGMENT DATED 08.04.2025 IN WP(C) NO.11247

OF 2024 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 1 & 2 IN WP(C) :

- 1 THE AUTHORISED OFFICER
SOUTH INDIAN BANK BUILDING NO.11 THRIGGAYA AVENUE
PRIYADHARSINI ROAD ALUVA, PIN - 683101
- 2 THE BRANCH MANAGER
SOUTH INDIAN BANK ALUVA BRANCH, PIN - 683101

BY ADVS.
SHRI.SUNIL SHANKER
SMT.VIDYA GANGADHARAN
SHRI.THOMAS GLAISON

RESPONDENTS/PETITIONERS AND RESPONDENTS 3 & 4 IN WP(C) :

- 1 SHEELA FRANCIS PARAKKAL
AGED 64 YEARS
W/O LATE FRANCIS PARAKKAL, PARAKKAL HOUSE, ASSISILANE,
ALUVA, PIN - 683101



- 2 DEEPAK FRANCIS PARAKKAL
AGED 47 YEARS
S/O LATE FRANCIS PARAKKAL, PARAKKAL (H), ASSISSILANE,
ALUVA, PIN - 683101
- 3 RUPAK FRANCIS PARAKKAL
AGED 44 YEARS
S/O LATE FRANCIS PARAKKAL 2C, NOEL ECOTAT, VALLATHOL
JUNCTION TRIKKAKKARA, PIN - 682021
- 4 THE GENERAL MANAGER
RESERVE BANK OF INDIA BAKERY JUNCTION P.B NO.6507
THIRUVANANTHAPURAM, PIN - 695033
- 5 HDB FINANCIAL SERVICES LTD.,
2ND FLOOR, DOOR NO.37/1912, JK CHAITHANYA BUILDINGS,
OPPOSITE SWAPNIL APARTMENT, KALoor, KADAVANTHRA ROAD,
KADAVANTHRA, COCHIN, REP BY ITS MANAGER * ADDL.R4 IS
IMPLEADED AS PER ORDER DATED 07.01.2025 IN I.A.01/2024
IN WP(C)11247/2024,
PIN - 682017.

BY ADVS.
SHRI.PRAVEEN K. JOY
SHRI.P.PAULOCHAN ANTONY
SHRI.SREEJITH K.
SHRI. G.VISWANATHAN
SRI.N.ABHILASH
SRI.E.S.SANEEJ
SHRI.ALBIN VARGHESE
SMT.FATHIMA SHALU S.
SMT.ABISHA.E.R
SMT.MEGHA G.
SMT.LAKSHMI K.S.
SHRI.ABHIJITH V. PRASAD
SHRI.ALTHAF AMEER
SMT.ARCHANA VINOD
SRI.M.P.UNNIKRISHNAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19.08.2025, THE
COURT ON 22.08.2025 DELIVERED THE FOLLOWING:



JUDGMENT

Sushrut Arvind Dharmadhikari, J.

Heard on the question of admission.

2. The present intra court appeal filed under Section 5 of the Kerala High Court Act, 1958, assails the judgment dated 08.04.2025 passed in W.P(C)No.11247 of 2024, whereby the learned Single Judge has disposed of the writ petition with the following directions:

“i. There will be a declaration that the second respondent has no authority to retain the original title deeds of the petitioner after closure of a loan account.

ii. The direction to release the title documents belonging to the petitioners is declined due to non-availability of the documents.

iii. The claim for compensation raised in this writ petition is declined reserving the right of the petitioners to approach appropriate other forum.

Iv. An amount of Rs.50,000/- is imposed as costs on the second respondent of which Rs.25,000/- shall be paid to the petitioners and the balance Rs.25,000/- shall be paid to the Kerala Legal Services Authority. The costs shall be paid within 15 days from the date of receipt of a copy of this judgment. It is clarified that, these costs shall not be set off against the compensation, if any, claimed by the petitioner.”



3. The appellants herein were the respondent Nos.1 and 2 in the writ petition whereas the respondent Nos.1 to 3 were the petitioners and respondent Nos.4 and 5 were the respondent Nos.3 and 4 in the writ petition.

4. The brief facts of the case are that respondent Nos.1 to 3 had filed the writ petition seeking a direction to release their title deeds and also for a declaration that the 2nd appellant had no authority to retain their original title deeds despite closure of the loan account.

5. The learned Counsel for the appellants contended that the learned Single Judge did not consider the maintainability of the writ petition since the relief sought in the writ petition is not in relation to discharge of any public function. The learned Single Judge ought to have held that the appellants herein are the private Bank, therefore, the writ petition itself ought not to have been entertained. He further



pointed out that instead of considering the issue of maintainability, the learned Single Judge went on to decide the writ petition on merits as also imposed heavy cost of Rs.50,000/- on the appellants. The learned Counsel relying on the judgment passed in WA No.2130 of 2024, wherein the similar issue cropped up with regard to the maintainability of the writ petition, this Court had allowed the writ appeal, dismissing the writ petition. The learned counsel for the appellants submitted that in view of the aforesaid, the writ appeal deserves to be allowed.

6. The learned counsel for the appellants relied on a judgment passed by the Hon'ble Apex Court in *S.Shobha v. Muthoot Finance Ltd.*, [2025 (2) KHC 229] and paragraph nos. 7, 8 & 9 of the said judgment reads thus:

“7. Applying the above test, the respondent herein cannot be called



a public body. It has no duty towards the public. It's duty is towards its account holders, which may include the borrowers having availed of the loan facility. It has no power to take any action, or pass any order affecting the rights of the members of the public. The binding nature of its orders and actions is confined to its account holders and borrowers and to its employees.

Its functions are also not akin to Governmental functions

8. A body, public or private, should not be categorized as “amenable” or “not amenable” to writ jurisdiction. The most important and vital consideration should be the “function” test as regards the maintainability of a writ application. If a public duty or public function is involved, any body, public or private, concerned or connection with that duty or function, and limited to that, would be subject to judicial scrutiny under the extraordinary writ jurisdiction of Article 226 of the Constitution of India.

9. We may sum up thus

(1) For issuing writ against a legal entity, it would have to be an instrumentality or agency of a State or should have been entrusted with such functions as are Governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence Governmental.

(2) A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government; (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of



public nature; and (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

(3) Although a non-banking finance company like the Muthoot Finance Ltd. with which we are concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company.

(4) A private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.

(5) Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule. In exceptional cases a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

(6) Merely because a statute or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.

(7) If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of



such power is immaterial but, nevertheless, there must be the public law element in such action.

(8) According to Halsbury's Laws of England, 3rd Ed. Vol.30,p.682, “a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform, and which perform the duties and carries out its transactions for the benefit of the public and not for private profit”. There cannot be any general definition of public authority or public action. The facts of each case decide the point.”

7. According to the above judgment, the learned Single Judge could not have entertained the writ petition against a private Bank which would normally not be amenable to Writ Jurisdiction under Article 226 of the Constitution of India. The aspect of maintainability was not considered at all. It is a settled legal position that private banks are not ‘state’ within the meaning of Article 12 of the Constitution of India as such, not amenable to writ jurisdiction under Article 226 of the Constitution of India. The judgment passed by the



learned Single Judge deserves to be set aside.

8. Per contra, the learned Counsel for the respondents 1 to 3 opposed the afore prayer and submitted that the learned Single Judge has not committed any error, looking to the fact that the Private Banks are also discharging public functions and that the documents kept for nine long years even after closure of the account would amount to violation of the fundamental rights of respondent Nos.1 to 3. Therefore, the writ appeal deserves to be dismissed.

9. Heard the learned Counsel for the appellants and the learned Counsel for respondent Nos.1 to 3.

10. The Hon'ble Apex Court in the case of *Federal Bank Ltd. v. Sagar Thomas and others* reported in (2003) 10 SCC 733 has held that, private companies, including private banks, would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution



of India. However, there are certain circumstances where a writ may be issued to private bodies or persons if there are statutes that need to be complied with by all concerned, including private companies. It is further held that merely because the Reserve Bank of India has laid down the banking policy in the interest of the banking system and in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors, that does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty.

11. A Division Bench of this Court in ***Mathew Ignituous C. v. Catholic Syrian Bank Limited [(2019 (5) KHC 835)]***, has categorically held that a scheduled bank registered as a company under the Companies Act do not fall within the purview of 'State' or other authorities under Article 12 of the Constitution of India. Therefore, such a bank is not amenable



to the jurisdiction under Article 226 of the Constitution of India.

12. Admittedly, in the present case, the appellant bank is a private commercial bank, therefore, the same is not amenable to writ jurisdiction under Article 226 of the Constitution of India. The learned Single Judge has committed an error in entertaining the Writ Petition and issuing certain directions. In the case of *Mathew Ignitious (supra)*, it has been already held that the private scheduled bank registered under the Companies Act do not fall within the purview of “State” or other authorities under Article 12 of the Constitution of India. As such, the judgment of the learned Single Judge is hereby set aside. The Writ Petition stands dismissed as not maintainable. However, the respondents 1 to 3 herein would be at liberty to work out the remedies in accordance with law, if so advised.



Accordingly, this Writ Appeal is allowed.

Sd/-

**SUSHRUT ARVIND DHARMADHIKARI
JUDGE**

Sd/-

**SYAM KUMAR V.M.
JUDGE**

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