

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 13<sup>TH</sup> DAY OF APRIL 2023 / 23RD CHAITHRA, 1945

WP(C) NO. 2810 OF 2022

PETITIONERS:

- 1 ST.MARY'S ORTHODOX SYRIAN CHURCH  
ATTINKUNNU, KAKKOOR P.O., PIN - 686 662,  
REPRESENTED BY ITS TRUSTEE, SRI.SAJU VARGHESE,  
S/O.VARGHESE, AGED 60 YEARS, MADATHALIL HOUSE, KAKKOOR  
P.O., KOTHATTUKULAM, ERNAKULAM DISTRICT, PIN - 686662
- 2 FR.BINOY BIJU @ FR.ZACARIAH GEORGE,  
AGED 30 YEARS, S/O.BIJU GEORGE, RESIDING AT NIRAVEL  
PUTHEN VEEDU, OLIAPPURAM P.O., KIZHAKOMBU, VADAKARA,  
PIN - 686 662, ASSISTANT VICAR, ST.MARY'S ORTHODOX  
SYRIAN CHURCH, ATTINKUNNU, KAKKOOR P.O, PIN - 686662

BY ADVS.  
P.MARTIN JOSE  
P.PRIJITH  
THOMAS P.KURUVILLA  
R.GITESH  
AJAY BEN JOSE  
MANJUNATH MENON  
SACHIN JACOB AMBAT  
ELDHO CHERIAN  
HANI P.NAIR  
ANNA LINDA V.J  
HARIKRISHNAN S.

RESPONDENTS:

- 1 THE STATE OF KERALA  
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 2 THE DISTRICT COLLECTOR  
ERNAKULAM CIVIL STATION, KAKKANADU, PIN - 682030
- 3 THE STATE POLICE CHIEF,  
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM, PIN - 695001
- 4 THE DISTRICT POLICE CHIEF (RURAL),  
SH 16, OPP. POWER HOUSE, ALUVA, KERALA, PIN - 683101

- 5 THE DEPUTY SUPERINTENDENT OF POLICE,  
OFFICE OF THE DEPUTY SUPERINTENDENT OF POLICE,  
PUTHENCRUZ P.O., ERNAKULAM DISTRICT, PIN - 682308
- 6 THE STATION HOUSE OFFICER,  
KOOHATTUKULAM POLICE STATION, KOOHATTUKULAM P.O.  
ERNKUKLAM DISTRICT, PIN - 686662
- 7 N.K.BABU  
S/O.KURIAN, NJALUPARAMBIL HOUSE, KAKKOOR P.O.,  
KOOHATTUKULAM, ERNAKULAM DISTRICT, PIN - 686662
- 8 BABU MATHEW  
S/O.MATHEW, CHIRAKKEKUDIYIL HOUSE, KAKKOOR P.O.,  
KOOHATTUKULAM, ERNAKULAM DISTRICT, PIN - 686662
- 9 GEORGE JOSEPH  
S/O.JOSEPH, CHIRAKKEKUDIYIL HOUSE, KAKKOOR P.O.,  
KOOHATTUKULAM, ERNAKULAM DISTRICT, PIN - 686662
- 10 T.K.RAJU  
S/O.KURIAKOSE, THOTTAPPILLIL HOUSE, PAMPAKUDA P.O.,  
PAMPAKUDA, ERNAKULAM DISTRICT, PIN - 686667
- 11 N.S.GEORGE,  
S/O.SKARIAH, NIRAVATH HOUSE, KAKKOOR P.O.,  
KOOHATTUKULAM, ERNAKULAM DISTRICT, PIN - 686662
- 12 MANOJ JOSEPH  
S/O.JOSEPH, THILAPPILLIMARIYIL HOUSE, KAKKOOR P.O.  
KOOHATTUKULAM, ERNAKULAM DISTRICT, PIN - 686662
- 13 P.A.JOHN  
S/O.ABRAHAM, PULPARAYIL HOUSE, MANNATHOOR P.O.,  
KOOHATTUKULAM, ERNAKULAM DISTRICT, PIN - 686672
- 14 SKARIAH ABRAHAM  
S/O.ABRAHAM, APPALIKUNNEL HOUSE, KAKKOOR P.O.,  
KOOHATTUKULAM, ERNAKULAM DISTRICT, PIN - 686672  
  
SRI.K.C.ELDHO  
SRI.MALLENATHAN.M.  
SRI.ASOK M.CHERIAN, ADDL. ADVOCATE GENERAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
10.01.2023, THE COURT ON 13.04.2023 DELIVERED THE FOLLOWING:

**ANU SIVARAMAN, J.**

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**W.P.(C).No.2810 of 2022**

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**Dated this the 13<sup>th</sup> day of April, 2023**

**JUDGMENT**

1. This writ petition is filed by the St.Mary's Orthodox Syrian Church, Attinkunnu, Kakkoor, Ernakulam District represented by the Trustee and the Assistant Vicar of the church seeking directions to respondents 1 to 6 to afford adequate protection to the life of the 2<sup>nd</sup> petitioner to conduct religious services in the kurisupallies namely St.Ignatious Kurisupalli, Vettimoodu, St.George Kurisupalli, Athanickal and St. Thomas Kurisuppalli Nedungodu under the 1<sup>st</sup> petitioner church and to the parishoners of the 1<sup>st</sup> petitioner church in participating in such religious services without let, hindrance or obstruction from respondents 7 to 14, their men, agents or followers and to maintain public order and tranquility in the kurisupallies under the 1<sup>st</sup> petitioner church. A further prayer is made seeking directions to respondents 1 to 6 to act strictly adhering to the decision of the Hon'ble Supreme Court in K.S. Varghese's case ensuring that no priests or prelates appointed otherwise than in accordance with Malankara Orthodox Church

Constitution of 1934 conduct any sacraments including Holy Mass in the kurisupallies under the 1<sup>st</sup> petitioner Church.

2.I have heard Sri.S.Sreekumar, the learned Senior Counsel appearing for the petitioners as instructed by Sri.P. Martin Jose and Sri.Asok M. Cherian, the learned Additional Advocate General as well as Sri.K.C Eldho, the learned counsel appearing for respondents 7, 11 and 14.

3.It is submitted by the learned Senior Counsel appearing for the petitioners that the 1<sup>st</sup> petitioner Church is a Constituent Parish Church of Malankara Orthodox Syrian Church coming under the Kadanadu West Diocese. Ext.P1 is the Kalpana of the Diocesan Metropolitan, Kandanadu West Diocese of the Malankara Orthodox Church appointing the 2<sup>nd</sup> petitioner as the Assistant Vicar of the 1<sup>st</sup> petitioner Church. Respondents 7 to 14 are the members of erstwhile Patriarch Faction, who had disassociated from the Malankara Church and formed a new Church (Sabha) called Yacobaya Suriyani Christiani Sabha and is governed by the 2002 Constitution.

4. It is submitted that a suit was filed as O.S.No.2 of 1994 before the 1<sup>st</sup> Additional District Court, Ernakulam under Order 1 Rule 8 of the Code of Civil Procedure seeking a declaration that the 1<sup>st</sup> petitioner Church and its assets described under the plaint schedule therein are to be administered under the 1934 Constitution of the Malankara Orthodox Syrian Church. Thereafter, Exhibit P3 judgment was passed on 10.9.1998, wherein it was declared that the 1<sup>st</sup> petitioner church is to be administered under the provisions of the 1934 Constitution and that the present administration and the religious services in the church are to be continued until new arrangements are made after the election to the managing committee of the Malankara Church is held.

5. It is submitted that on 20.01.2022, two priests belonging to the Jacobite faction caused obstruction to the Vicar appointed under the 1934 Constitution and that a suit was filed by the 1<sup>st</sup> petitioner church and the then Vicar of the church as O.S 19/2022 under Order I Rule 8 of CPC before the Sub Court, Muvattupuzha seeking a permanent prohibitory injunction restraining the defendants therein, their men from interfering with the plaintiffs' rights to discharge the duties of the Vicar of the 1<sup>st</sup> petitioner Church. Later,

the suit was transferred to the 1<sup>st</sup> Additional District Court, Ernakulam (Special Court assigned for handling church cases) and was re-numbered as O.S.No.27/2009. It is submitted that after the judgment in **K.S. Varghese v. St. Peter's & Paul's Syrian Orthodox Church and others** [(2017) 15 SCC 333], Ext.P4 judgment was passed on 31.1.2020 holding that the church is a Malankara Church liable to be administered under 1934 Constitution and restraining the defendants, their men, agents or anybody claiming under them by a perpetual injunction from interfering with the 4<sup>th</sup> plaintiff, his successors in office or any Vicar or priest appointed under the 1934 Constitution in discharge of their religious, ecclesiastical and other duties, including the conduct of holy mass on Sundays and from trespassing into the petitioner church for conducting holy mass or other ecclesiastical functions. It is submitted that at the time of Ext.P3 judgment, the religious services of the 1<sup>st</sup> petitioner church were conducted by both factions and that after Ext.P4 judgment, parallel services in the 1<sup>st</sup> petitioner church and the kurisupallies were stopped and only Vicar and Priest of 1<sup>st</sup> petitioner church appointed by the Diocesan Metropoliton of Kandanadu West Diocese of Malankara are conducting religious services in the 1<sup>st</sup> petitioner church and its kurisupallies without any obstruction from respondents 7 to 14.

6. It is submitted that when the Managing Committee of the 1<sup>st</sup> petitioner Church decided to do maintenance and painting works of the Kurisupallies, the same was obstructed by the respondents 7 to 14 who threatened that they will not allow the 2<sup>nd</sup> petitioner and the parishioners to conduct religious services in the three kurisupallies under the 1<sup>st</sup> petitioner Church. Thereafter, respondents 7 to 14 and their supporters trespassed into the kurisupallies, broke open the offertory boxes and took away the money and then further locked the kurisupallis with the lock and keys brought by them. When there were continuing obstructions from respondents 7 to 14, the petitioners had approached the police seeking necessary assistance for effectuating the decree of the Apex Court, but no steps were taken on the same. It is contended by the learned Senior Counsel for the petitioners that the police are duty bound to afford adequate assistance to see that the directions of the Apex Court are complied with in full and that the refusal to do so is completely inexcusable.

7. The learned Senior Counsel appearing for the petitioner took me through the history of the disputes between the rival factions in the Malankara Church and traced the litigation between the

parties from the early days of the dispute till the present time when orders of police protection have been granted to implement the judgment of the Apex Court in **K.S.Varghese (supra)**.

8.The learned counsel places specific reliance on the judgments granting such reliefs after the declaratory judgment of the Apex Court. Some of the decisions cited are **St.Mary's Orthodox Church v. The State Police Chief** [2019 (3) KLT 419 SC], **Fr.Issac Mattammel Cor-Episcopa v,. St.Mary's Orthodox Syrian Church and others** [2019 (4) KHC 868], **Marthoman Church, Mulanthuruthy and others v. State of Kerala and others** [2020 (3) KHC 448], **Varghese K.S. v. St. Peter's & Paul's Syrian Orthodox Church and others** [2020 (4)KHC 454] and **Fr.A.V.Varghese v. State of Kerala** [2021 (5) KLT 14].

9.The learned Additional Advocate General contended that that in the facts of this case, it appears that the Jacobite faction is presently in possession of the Church and that religious services are also being carried out in the Church. It is submitted that the police and the State administration are fully bound by the



decisions of the Apex Court in **K.S Varghese's case**. The police as well as the State is ready and willing to grant all necessary support for the implementation of the judgment of the Apex Court and that restraint was exercised only in view of the fact that law and order situations may arise if the decree is sought to be implemented. It is further contended that earnest steps are being taken by the Government to resolve the disputes between the parties and it is only due to the said facts that there has been a delay in implementing the decree. It is further contended that at present, there is no breach of peace and that the assistance as required by the petitioners may lead to a breach of peace which is the reason why the same has not been enforced till date.

10. Respondents 7, 11 and 13 have filed a counter affidavit contending that there is no church known as St. Mary's Orthodox Syrian Church in Attinkunnu. It is contended that there is a St. Mary's Jacobite Syrian Christian Church and that the said church was never a constituent of the Malankara Orthodox Syrian Church. It is also submitted that Exhibit P1 is a disputed document and that it is not genuine. It is submitted that Exts. P2 and P3 cannot be considered as valid documents and that the church is not made a party to the

suit and that the respondents 7, 11 and 13 are not parties to Ext.P4 judgment. It is submitted that Exhibits P5, P8 and P9 documents will not confer any rights in favour of the petitioners and that Ext.P12 is a fraudulent document. It is also contended that when there are disputed question of facts, a writ petition is not maintainable. It is submitted that the Kurisadies are privately owned by individuals and there is no ownership or title in the church. It is also contended that effect of the judgment of **K.S Varghese's case** is not to oust any parishioners or priests from the enlisted churches since all the priests and prelates, parishioners, including respondents 7 to 12 owe allegiance to the 1934 Constitution and they have the right to remain in the church and to participate in its administration. Referring to the provision of the 1934 Constitution, it is contended that the said constitution itself provides that the Patriarch of Antioch is the supreme spiritual head of the Malankara Church and that the petitioners, who do not acknowledge the spiritual supremacy of the Patriarch have no right to contend that they are the protectors of 1934 Constitution or that the contesting respondents do not owe allegiance to the same. It is further contended that the Apex Court has also directed that each case has to be considered on its merits and that there can be no direction issued without considering the facts of the case.

11.I have considered the contentions advanced. In the instant case it is clear that a suit has been filed by the petitioners in the writ petition in which Exhibit P3 judgment was passed holding that the church in question is a Malankara Church, which is to be administered in accordance with the 1934 Constitution. Later Exhibit P4 was passed on 31.1.2020 by the 1<sup>st</sup> Additional District Court, Ernakulam which was the Special Court for considering the said suit. The decree is as follows:

"1. The defendants, their men, agents or anybody claiming under them are restrained from perpetual injunction from interfering with the 4<sup>th</sup> plaintiff, his successors in office or any vicar or Priest appointed by the, Diocesan. Metropolitan of Kandanad West Diocese under the 1934 Constitution in discharge of their, religious, ecclesiastical and other duties in the first plaintiff church including the conduct holy mass on Sundays and other days.

2. The defendants, their men, agents or anybody claiming under them are also restrained by a perpetual injunction from trespassing into the 1<sup>st</sup> plaintiff church for conducting holy mass or other ecclesiastical functions."

12.Though the respondents raised a claim with regard to the identity of the church, they have no contention that the church in question is not the church which is governed by Exhibits P3 and P4 judgments. Further, the contention that the decree should be executed through proceedings under Order XXI CPC would also not be tenable since the Apex Court in **K.S Varghese's case** had

specifically held that directions issued therein would be applicable in all matters relating to individual churches under the Malankara Church. In Exhibits P3 and P4, the civil courts have specifically found that the church in question is a constituent church of the Malankara Church. Apart from stating that the petitioners in the writ petition do not recognise the Patriarch of Antioch as their spiritual head, no material whatsoever is on record to substantiate these contentions.

13.It is true that in a case where there are *bona fide* disputes with regard to the nature and identity of the property involved, this Court would not be justified in directing police protection to be granted or in attempting to resolve such *bona fide* disputes in proceedings under Article 226. However, when the objections raised are only for the purpose of frustrating the proper enforcement of binding orders of the Apex Court, this Court would not be powerless to pass appropriate orders to see that the directions of the Apex Court are complied with by all concerned.

14.In view of the fact that Exhibit P3 and P4 judgments specifically finds that the church in question is a Constituent Parish Church

of the Malankara Orthodox Syrian Church and that the petitioners herein are entitled to the reliefs as sought for by them, I am of the opinion that the contentions now raised in the counter affidavit filed on behalf of the contesting party respondents are absolutely untenable and cannot be accepted. There is also no disputed question of fact which requires a consideration and no bona fide claim that can be adjudicated in the execution proceedings. In the above view of the matter, I am of the opinion that Exhibit P4 is liable to be enforced in the light of the judgment of the Apex Court without execution proceedings being resorted to under Order XXI, CPC . I find that in view of the specific directions of the Apex Court in **K.S. Varghese's case** that the directions are liable to be complied with in full. The writ petition is, therefore, allowed.

15. There will be a direction to the police to see that appropriate steps are taken in compliance with Ext.P3 and P4 judgments. Adequate protection shall be granted to the 2<sup>nd</sup> petitioner, Parishioners to carry out the religious services in the kurisupallies under the 1<sup>st</sup> petitioner church without let or hindrance from respondents 7 to 14 or anybody claiming through

them. Appropriate steps shall be taken by the respondents to comply with the directions within a period of two months from the date of receipt of a copy of this judgment.

Sd/-

**Anu Sivaraman, Judge**

sj

APPENDIX OF WP(C) 2810/2022

PETITIONERS' EXHIBITS

- Exhibit P1 TRUE COPY OF KALPANA NO.40/2021 DATED 30-09-2021
- Exhibit P2 TRUE COPY OF PLAINT IN O.S.NO.2 OF 1994 OF 1ST ADDITIONAL DISTRICT COURT, ERNAKULAM
- Exhibit P3 TRUE COPY OF JUDGMENT DATED 10-09-1998 IN O.S.NO.2 OF 1994 OF 1ST ADDITIONAL DISTRICT COURT, ERNAKULAM
- Exhibit P4 TRUE COPY OF JUDGMENT DATED 31-01-2020 IN O.S.NO.27 OF 2009 OF 1ST ADDITIONAL DISTRICT COURT, ERNAKULAM
- Exhibit P5 TRUE COPY OF OWNERSHIP CERTIFICATE DATED 16-03-2020 ISSUED BY THE SECRETARY, THIRUMARADI GRAMA PANCHAYAT
- Exhibit P6 TRUE COPY OF CONSUMER PROFILE IN RESPECT OF CONSUMER NO. 1155997011829 ISSUED BY THE ASSISTANT ENGINEER, ELECTRICAL SECTION (KSEBL), PAMPAKUDA
- Exhibit P7 TRUE COPY OF RECEIPT NO.967786 DATED 18-10-2016 ISSUED BY THE KERALA STATE ELECTRICITY BOARD LTD., PAMPAKUDA ELECTRICAL SECTION IN RESPECT OF CONSUMER NO.1155997011829
- Exhibit P8 TRUE COPY OF OWNERSHIP CERTIFICATE DATED 16-03-2020 ISSUED BY THE SECRETARY, THIRUMARADI GRAMA PANCHAYAT IN RESPECT OF ST.GEORGE KURISUPALLI HAVING DOOR NO.79/5 IN THE NAME OF 1ST PETITIONER CHURCH
- Exhibit P9 TRUE COPY OF CONSUMER PROFILE IN RESPECT OF CONSUMER NO. 1155992012171 ISSUED BY THE ASSISTANT ENGINEER, ELECTRICAL SECTION (KSEBL), PAMPAKUDA
- Exhibit P10 TRUE COPY OF RECEIPT NO.967787 DATED 18-10-2016 ISSUED BY THE KERALA STATE ELECTRICITY BOARD LTD., PAMPAKUDA ELECTRICAL SECTION IN RESPECT OF CONSUMER NO. 1155992012171 OF ST.GEORGE KURISUPALLI

- Exhibit P11 TRUE COPY OF LAND TAX PAID RECEIPT DATED 14-07-2021 ISSUED BY VILLAGE OFFICE, THIRUMARADY
- Exhibit P12 TRUE COPY OF PURCHASE CERTIFICATE NO.1854/1978 DATED 29-08-1978 ISSUED TO 1ST PETITIONER
- Exhibit P13 TRUE COPY OF OWNERSHIP CERTIFICATE DATED 16-03-2020 ISSUED BY THE SECRETARY, THIRUMARADI GRAMA PANCHAYAT IN RESPECT OF ST.THOMAS KURISUPALLI
- Exhibit P14 TRUE COPY OF CONSUMER PROFILE IN RESPECT OF CONSUMER NO.1155993011888 ISSUED BY THE ASSISTANT ENGINEER, ELECTRICAL SECTION (KSEBL), PAMPAKUDA
- Exhibit P15 TRUE COPY OF RECEIPT NO.987785 DATED 18-10-2016 ISSUED BY THE KERALA STATE ELECTRICITY BOARD LTD., PAMPAKUDA ELECTRICAL SECTION IN RESPECT OF CONSUMER NO.1155993011888 OF ST.THOMAS KURISUPALLI
- Exhibit P16 TRUE COPY OF FESTIVAL NOTICE PUBLISHED BY THE CHURCH FOR THE CONDUCT OF ANNUAL FEAST OF THE 1ST PETITIONER CHURCH FOR THE YEAR 2022
- Exhibit P17 TRUE COPY OF REPRESENTATION DATED 14-01-2022 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 4TH RESPONDENT WITH COPY TO RESPONDENTS 5 AND 6
- Exhibit P18 TRUE COPY OF ACKNOWLEDGMENT ISSUED FROM THE OFFICE OF THE 4TH RESPONDENT FOR RECEIPT OF EXHIBIT.P17

RESPONDENTS' EXHIBITS

- Exhibit R7 A THE RESPONDENTS PAYING ELECTRICITY BILL REGULARLY AND THE ELECTRICITY BILLS PAID BY THESE RESPONDENTS
- Exhibit R7 B THE TAX RECEIPT PAID BY THESE RESPONDENTS ON 6/10/2018
- Exhibit R7 C A TRUE COPY OF THE SETTLEMENT DEED NO.2426/1996
- Exhibit R7 D A TRUE COPY OF THE TAX PAID RECEIPT DATED 22/6/2022
- Exhibit R7 E A TRUE COPY OF THE PLAINT IN OS NO.130/2022 FILED BEFORE THE MUNSIF COURT, MUVATTUPUZHA