

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

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

WP (C) NO. 12404 OF 2020

PETITIONERS:

- 1 ST.STEPHENS ORTHODOX SYRIAN CHURCH
MUKHATHALA, KANNANALLOOR, KOLLAM, PIN-691576,
REP.BY ITS VICAR, FR.MATHEW ABRAHAM,
S/O.LATE M.ABRAHAM, AGED 50 YEARS, KIZHAKKEDATHU
BETHEL, PERUMPUZHA.P.O, PIN-691504, KOLLAM DISTRICT.
- 2 FR.MATHEW ABRAHAM,
AGED 50 YEARS
S/O.LATE M.ABRAHAM, KIZHAKKEDATHU BETHEL,
PERUMPUZHA.P.O, PIN-691504, KOLLAM DISTRICT.

BY ADVS.

SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA
SRI.R.GITESH
SMT.HANI P.NAIR
SRI.AJAY BEN JOSE
SRI.MANJUNATH MENON
SRI.SACHIN JACOB AMBAT
SHRI.HARIKRISHNAN S.

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 THE DISTRICT COLLECTOR,
CIVIL STATION, KOLLAM-691001.
- 3 THE STATE POLICE CHIEF,
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM-695001.
- 4 THE CITY POLICE COMMISSIONER,
KOLLAM, PIN-691001.

- 5 THE ASSISTANT POLICE COMMISSIONER,
CHATHANNUR-691572, KOLLAM.
- 6 THE STATION HOUSE OFFICER,
KANNANALLOOR POLICE STATION, KANNANALLOOR,
PIN-691576, KOLLAM.
- 7 FR.PRINCE PONNACHAN,VICAR,
ST.STEPHEN'S JACOBITE CHURCH, ALUMMOODU.P.O,
MUKHATHALA, KOLLAM-691577.
- 8 MR.SANTHOSH KOSHY,
PUNNAVILA SANTHOSH BHAVAN, PALAMUKKU,
KANNANALLOOR.P.O, KOLLAM-691576.
- 9 MR.JACOB,
JINCY BHAVAN, KANNANALLOOR.P.O, KOLLAM-691576.

SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P
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.12404 of 2020

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Dated this the 13th day of April, 2023

JUDGMENT

1.This writ petition is filed by the St.Stephen’s Orthodox Syrian Church, Mukhathala, Kannanallor, Kollam District represented by the Vicar of the church seeking directions to respondents 1 to 6 to afford adequate protection to the 2nd petitioner to conduct religious services in the 1st petitioner church, its Cemetery and Chapels and to the parishioners in participating in such religious services without any hindrance from respondents 7 to 9, their men, agents or followers. 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 1st petitioner Church, its chapel, cemetery or any other appurtenant buildings thereto.

2.I have heard Sri.S.Sreekumar, the learned Senior Counsel appearing

for the petitioners as instructed by Adv.Martin P Jose and Sri.Asok M. Cherian, the learned Additional Advocate General appearing for respondents 1 to 6 as well as Sri.Sajan Varghese, the learned counsel appearing for respondents 7 to 9.

3.It is submitted by the learned Senior Counsel appearing for the petitioners that the 1st petitioner Church is one of the constituent churches of the Malankara Orthodox Syrian Church governed and administered under the 1934 constitution. It is submitted that St.Stephen's Orthodox Syrian Church, Mukhathala, is included as Serial No.184 in the list of churches annexed to O.S No. 4/1979. It is submitted that Exts.P1 is the Kalpana of the Diocesan Metropolitan, Kollam Diocese of the Malankara Orthodox Church appointing the 2nd petitioner as the Vicar of the 1st petitioner Church. It is submitted that because of dissension of the Malankara Church in 1977, the 1st petitioner church was closed and the patriarch faction constructed a new church near the 1st petitioner church and has started conducting services.

4.It is stated that the Diocesan Metropolitan, Vicar and two others filed O.S. 58/1977 before the District Court, Ernakulam seeking a decree of mandatory injunction to the defendants in the suit to

handover the keys of the church to the plaintiff and also a permanent prohibitory injunction restraining the defendants or anybody under them from causing obstruction to the plaintiff in conducting religious ceremonies in the church, including the marriage scheduled to be solemnized on 11.11.1974. The suit was initially dismissed for want of Section 92 sanction. The decree was set aside by this Court and was remitted back for fresh disposal holding that leave under Section 92 is not required. Thereafter, an ex parte decree was passed, which was later set aside by this Court by Ext.P6 judgment and was remanded back for fresh disposal, status quo was also ordered. Later, by Ext.P7 judgment, the suit was decreed as prayed for. Even though an R.F.A was filed as R.F.A No.618/2010 by the defendants, the appeal was dismissed as abated by Ext.P8 judgment.

5. However, in the meanwhile, the decision in **K.S. Varghese v. St. Peter's & Paul's Syrian Orthodox Church and others** [(2017) 15 SCC 333] had been rendered by the Apex Court. It is submitted that an appeal was filed as S.L.P(C) Nos. 33156 to 33159 of 2014 in the case of St. Mary's Church, Piravom and the appeal was disposed as follows:

"As the controversy in question has been finally decided in the

case of K.S.Verghese Vs. St.Peter's & Paul's Syrian Orth. & Ors. in C.A. No.3674 of 2015 etc. decided on 3rd July, 2017 [2017 (15) SCC 333], which holds the field, nothing further survives in the matters for adjudication. Consequently, the appeals stand disposed of in view of the above judgment. Let all the concerned courts and authorities act in terms of the judgment. Let there be no multiplicity of the litigation on this aspect any more in the various courts. The decision rendered in representative suit is binding on all."

6. It is submitted that even after Ext.P8 judgment, respondents 7 to 9 and their henchmen, who are not parishioners of 1st petitioner church have been obstructing the 2nd petitioner in conducting religious services and the parishioners from attending such religious services. Since 2nd petitioner is the lawfully appointed Vicar as per the 1934 Constitution, he is entitled to discharge his duties as such. However, respondents 7 to 9 and their men forcefully prevented 2nd petitioner from entering the Church and performing his duties. When there were continuing obstructions from respondents 7 to 9, 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. Respondents 7 to 9 have filed a counter affidavit contending that there is no church known as St. Stephen's Orthodox Syrian Church in Mukhathala and that the real name of the church is St. Stephen's Jacobite Syrian Church and that the said church was established in the year 1070ME by three people, Mathen Mathunni, Eapen Itty and Cherian Mathen and the udampadi is also produced as Ext.R7(a). It is also stated that when there were disturbances at the instance of Orthodox Church, a suit was filed as O.S No.178/115 before the District Court, Quilon and Ext.R7(b) judgment was also passed against which an appeal was filed and Ext.R7(c) judgment was passed. It is also stated that the prayers in Ext.R7(e) suit were only personal reliefs and that Ext.P7 judgment would be only a judgment in personam and that nothing survives after the death of the sole plaintiff and that the suit itself got abated. In support of the said contention, reliance is placed on the decision of the Apex Court in **Syenda Taher Saifuddin Saheb v. State of Bombay** [1958 KHC 426] . It is contended that the church in question maintains a character similar to Knanaya Churches, Churches under Evangelistic association of the East, Simhasana Churches and churches belonging to St.Antony's Churches and is not covered by **K.S. Varghese's** case.

10.The learned Additional Advocate General submits that the police and the State administration are fully bound by the decisions of the Apex Court in **K.S. Varghese v. St. Peter's & Paul's Syrian Orthodox Church and others.** However, it is 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.

11.Having heard the contentions advanced on either side, I notice that the fact that the St.Stephen's Orthodox Syrian Church, Mukhathala is a constituent parish church of the Malankara Church cannot be disputed in view of the fact that the name of the said church is included in the list annexed to O.S.No.4/1979. The judgment of the Apex Court in **K.S.Varghese's case (supra)** is admittedly applicable to all parish churches being constituents of the Malankara Church and to all properties of such churches. The question whether the constituent churches have to be governed by separate decrees in each case stands covered by the judgments of this Court. Once it is found that the church in question is a constituent parish church of the Malankara Church, the judgment of the Apex Court would become applicable and the further questions cannot be considered by this Court and the reliefs as sought for

have to be considered in the light of the binding judgments of the Apex Court.

12.The contentions raised by the respondents with regard to the identity of the church are also not tenable in view of the fact that the church in question is included in the list of churches as a constituent parish church of the Malankara Church. If that be so, the contention raised by the respondents that since the appeal had abated, there is no decree left to be executed will also be irrelevant. The Apex Court had specifically directed that all the parish churches of the Malankara Church shall be governed by the directions and the decree of the Apex Court. Such declaration is binding on all courts within the territory of India. The contention that, even if that be so, the decree of the Apex Court can be enforced only through execution proceedings under Order XLV of the CPC is also an untenable contention. The petitioners have established that the church in question is a constituent church of the Malankara Church. In the said view of the matter, the church would be governed by the directions of the Apex Court in **K.S. Varghese**. The State and its machinery is duty bound to afford all necessary assistance for the enforcement of the said decree in terms of Articles 142(1) and 144 of the Constitution of India.

13. In the above factual situation, the contention of the respondents that there has to be a decree drawn up separately in respect of the separate constituent churches and that the decree has to be executed separately is completely unacceptable. This Court in **Mar Miletius Yuhanon v. Mar Thomas Dionysious & Ors.** [2020 (4) KHC 14] and in **Marthoman Church, Mulanthuruthy & Ors. v. State of Kerala & Ors.** [2020 (3) KHC 448] had considered the question and has held that it is the duty of the police to see that law and order is maintained and that the directions of the Apex Court are given full effect to. It was held that if there is any illegal obstruction to the execution of the decree or the binding directions of the Apex Court, police assistance can be ordered. Where the Apex Court has specifically declared the law and has held that the law laid down is applicable to all constituent churches under the Malankara Orthodox Church, the respondents cannot be heard to raise contentions against the findings already rendered by the Apex Court.

14. 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. 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.

15. The contention that a contempt petition is pending before the Apex Court is also completely untenable, since the filing of a contempt of court case by some other beneficiaries of the judgment cannot be a ground for the contesting respondents to contend that they will not comply with the directions contained in the judgment. The said contention has also been considered and rejected by this Court in judgment dated 18.05.2020 in W.P.(C) No.4071/2020.

16.I find from the pleadings on record that the party respondents are only attempting to delay the matter and that they have not raised any sustainable contentions which can be considered by this Court in these proceedings.

17.In the above view of the matter, the official respondents can, by no stretch of imagination, contend that they are powerless to implement the directions of the Apex Court. Suffice it to say that they are duty bound to do so.

18.In the result, this writ petition is allowed. There will be a direction to respondents 1 to 6 to render necessary assistance to the 2nd petitioner to peacefully enter the 1st petitioner Church and to conduct the religious services therein, its cemetery and chapels and for the parishioners of the 1st petitioner church in participating such religious activities without let, hindrance or obstruction from the contesting party respondents. Necessary shall be done within a period of two months from date of receipt of a copy of this judgment.

sd/-

Anu Sivaraman, Judge

APPENDIX OF WP(C) 12404/2020

PETITIONERS' EXHIBITS

- EXHIBIT P1 TRUE COPY OF KALPANA NO.161/2020 DATED 18.05.2020 APPOINTED 2ND PETITIONER AS THE VICAR OF THE 1ST PETITIONER CHURCH
- EXHIBIT P2 TRUE COPY OF KALPANA NO.45/14 DATED 29.03.2014 APPOINTED FR.JOSE M.DANIEL TO ASSIST REV.FR.C.ALEXANDER FOR CONDUCTING RELIGIOUS SERVICES IN THE CHURCH
- EXHIBIT P3 TRUE COPY OF KALPANA NO.151/2016 DATED 17-10-2016,THE DIOCESAN METROPOLITAN APPOINTED FR.JOSE M.DANIEL AS THE VICAR OF THE 1ST PETITIONER CHURCH
- EXHIBIT P4 TRUE COPY OF MINUTES OF THE MANAGING COMMITTEE HELD ON 9TH AN 10TH AUGUST ,2002
- EXHIBIT P5 TRUE COPY OF KALPANA NO.83/2009 DATED 02.03.2009 APPOINTED ZACHARIAH MAR ANTHONIOS AS THE METROPOLITAN OF KOLLAM DIOCESE
- EXHIBIT P6 TRUE COPY OF JUDGMENT DATED 01.07.2010 IN THE A.S.NOI.610 OF 2001 SET ASIDING THE JUDGMENT AND DECREE DATED 25-08-2001 AND REMANDED THE MATTER BACK FOR FRESH DISPOSAL
- EXHIBIT P7 TRUE COPY OF JUDGMENT DATED 15.09.2010 IN O.S.NO.58OF 1977 OF DISTRICT COURT, ERNAKULAM
- EXHIBIT P8 TRUE COPY OF THE JUDGMENT DATED 21.01.2020 IN R.F.A.NO.618 OF 2010 OF THIS HON'BLE COURT
- EXHIBIT P9 TRUE COPY OF MINUTES OF THE MEETING DATED 03.03.2020 CONVENED BY SUB DIVISIONAL MAGISTRATE

- EXHIBIT P10 TRUE COPY OF MINUTES OF THE MEETING DATED 10.03.2020 CONVENED BY SUB DIVISIONAL MAGISTRATE
- EXHIBIT P11 TRUE COPY OF REPRESENTATION DATED 17.06.2020 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENTS 1 TO 6 FOR RENDERING POLICE PROTECTION
- EXHIBIT P12 TRUE COPY OF ACKNOWLEDGMENT DATED 17.06.2020 ISSUED BY THE 2ND RESPONDENT ACKNOWLEDGING THE RECEIPT OF EXHIBIT .P11
- EXHIBIT P12 (A) TRUE COPY OF ACKNOWLEDGMENT DATED 17.06.2020 ISSUED BY THE 4TH RESPONDENT ACKNOWLEDGING THE RECEIPT OF EXHIBIT P11
- EXHIBIT P12 (B) TRUE COPY OF ACKNOWLEDGMENT DATED 17.06.2020 ISSUED BY THE 5TH RESPONDENT ACKNOWLEDGING THE RECEIPT OF EXHIBIT .P11
- EXHIBIT P12 (C) TRUE COPY OF ACKNOWLEDGMENT DATED 17.06.2020 ISSUED BY THE 6TH RESPONDENT ACKNOWLEDGING THE RECEIPT OF EXHIBIT.P11
- EXHIBIT P13 TRUE COPY OF JUDGMENT IN W.A.NO.320 OF 2020 DATED 18.03.2020 OF THIS HON'BLE COURT
- EXHIBIT P14 TRUE COPY OF JUDGMENT IN W.P(C)NO.33316 OF 2019 DATED 18.05.2020 OF THIS HON'BLE COURT.

RESPONDENTS' EXHIBITS

- EXHIBIT R7 (a) TRUE COPY OF THE 'UDAMPADI' ENTERED IN 1070 ME.
- EXHIBIT R7 (b) TRUE COPY OF THE JUDGMENT DATED 16.06.1953 PASSED IN OS.NO.178/115 ON THE FILE OF DISTRICT MUNSIF'S COURT OF QUILON.
- EXHIBIT R7 (c) TRUE COPY OF THE JUDGMENT DATED 01.07.1967 RENDERED BY THE DISTRICT COURT OF QUILON

- EXHIBIT R7(d) TRUE COPY OF THE PAGES NO.57 TO 62 OF THE MINUTES BOOK OF THE DISPUTED CHURCH.
- EXHIBIT R7(e) TRUE COPY OF THE PLAINT IN OS.NO.58/1977 ON THE FILE OF FIRST ADDITIONAL DISTRICT COURT, ERNAKULAM.