

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. 25645 OF 2019

**PETITIONERS :**

- 1 REV. FR. C. K. ISSAC COR EPISCOPA,  
AGED 76 YEARS  
S/O. KURIAKOSE, VICAR, ST. JOHN'S BESPAGE  
ORTHODOX SYRIAN CHURCH, RESIDING AT CHENAYAPPILLIL  
HOUSE, PARAMBENCHERY, PULINTHANAM P.O.,  
POTHANICADU, MUVATTUPUZHA, ERNAKULAM DISTRICT,  
KERALA, PIN-686671.
  
- 2 REV. FR. P.V. PHILIP,  
AGED 70 YEARS  
S/O. POTHEN, ASSISTANT VICAR, ST. JOHN'S BESPAGE  
ORTHODOX SYRIAN CHURCH, RESIDING AT  
ARIMAPANCHIRAYIL HOUSE, PULINTHANAM P.O.,  
POTHANICADU, MUVATTUPUZHA, ERNAKULAM DISTRICT,  
KERALA, PIN-686671.
  
- 3 JAIN MATHEW GEORGE,  
AGED 37 YEARS  
S/O. GEORGE, TRUSTEE, ST. JOHN'S BESPAGE ORTHODOX  
SYRIAN CHURCH, RESIDING AT MADATHIKUDIYIL HOUSE,  
PULINTHANAM P.O., POTHANICADU, MUVATTUPUZHA,  
ERNAKULAM DISTRICT, KERALA, PIN-686671.

4 MATHEW T. THOMAS,  
AGED 60 YEARS  
S/O. THOMAS, SECRETARY, SECRETARY, ST. JOHN'S  
BESPHAGE ORTHODOX SYRIAN CHURCH, RESIDING AT  
THONIPPATTU HOUSE, PULINTHANAM P.O., POTHANICADU,  
MUVATTUPUZHA, ERNAKULAM DISTRICT, KERALA, PIN-  
686671.

BY ADVS.  
ROSHEN.D.ALEXANDER  
TINA ALEX THOMAS

**RESPONDENTS :**

- 1 STATE OF KERALA  
REPRESENTED BY CHIEF SECRETARY TO THE STATE,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,  
KERALA, PIN-695001.
- 2 STATE POLICE CHIEF,  
POLICE HEADQUARTERS, THIRUVANANTHAPURAM, KERALA,  
PIN-695001.
- 3 DISTRICT COLLECTOR,  
COLLECTORATE, KAKKANAD, ERNAKULAM DISTRICT,  
KERALA, PIN-682030.
- 4 DISTRICT POLICE CHIEF,  
ERNAKULAM RURAL, OFFICE OF DISTRICT POLICE CHIEF,  
ALUVA, ERNAKULAM DISTRICT,  
KERALA, PIN-683101.
- 5 REVENUE DIVISIONAL OFFICER,  
MUVATTUPUZHA, ERNAKULAM DISTRICT,  
KERALA, PIN-686661.
- 6 DEPUTY SUPERINTENDENT OF POLICE,  
MUVATTUPUZHA, ERNAKULAM DISTRICT,  
KERALA, PIN-686661.

- 7 INSPECTOR OF POLICE STATION AND STATION HOUSE  
OFFICER,  
POTHANIKAD POLICE STATION,  
MUVATTUPUZHA, ERANKULAM DISTRICT,  
KERALA, PIN-686671.
- 8 FR. K.K. MATHEWS,  
KUZHUVELIPPURAM HOUSE, PALLARIMANGALAM P.O.,  
POTHANIKAD, PIN-686671.
- 9 NOBY SCARIA,  
CHENAYAPPILLIL HOUSE, KADAVOOR P.O.,  
KADAVOOR, PIN-686671.
- 10 ELDBHOSE VARGHESE,  
PUTHUSSERIYIL HOUSE, PARAMBANCHERI, PULINTHANAM  
P.O., POTHANICADU, MUVATTUPUZHA,  
ERNAKULAM DISTRICT,  
KERALA, PIN-686671.
- 11 M.S. SOLI,  
MADATHIKKUDIYIL HOUSE, PULINTHANAM P.O.,  
POTHANICADU,  
MUVATTUPUZHA ERNAKULAM DISTRICT, KERALA, PIN-  
686671.

ADDL.R12 BASIL MATHEW  
AGED 36 YEARS  
S/O.MATHEW,  
UNNAMTHUVEETTIL HOUSE  
POTHANIKAD P.O,  
POTHANIKKAD, ERNAKULAM.

ADDL.R13 BABU JOHN,  
AGED 50 YERAS,  
S/O.JOHN,  
VELLAKKALLEL,  
PULINTHANAM P.O,  
PULINTHANAM.

BY ADVS.  
SRI.K.RAMAKUMAR (SR.)  
SRI.MANU GEORGE KURUVILLA  
C.A.NAVAS  
SRI.P.V.ELIAS  
SRI.T.K.SASIKUMAR  
SMT.MEGHA CHANDRAN  
SHRI.ASOK M.CHERIAN, ADDL. ADVOCATE GENERAL  
SHYAMPRASANTH T.S., GOVERNMENT PLEADER

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.25645 of 2019**

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

**JUDGMENT**

1. This writ petition is filed by the Vicar, Assistant Vicar, Trustee and Secretary of the St.John's Besphage Orthodox Church, Pulinthanam, Enanalloor Village, Muvattupuzha Taluk, Ernakulam District seeking directions to 7<sup>th</sup> respondent to prevent the respondents 8 to 10 and their men from violating the law as declared by Hon'ble Supreme Court in **K.S. Varghese's** case and also to ensure that petitioners 1 and 2, priests, vicars, Diocesan Metropolitan, Malankara Metropolitan are not prevented from conducting religious services in accordance with the 1934 Constitution.

2. I have heard Sri.S. Sreekumar, the learned Senior Counsel appearing for the petitioners as instructed by Sri.Roshen D. Alexander and Sri.Asok M. Cherian, the learned Additional Advocate General as well as Sri.K Ramakumar, the learned

Senior Counsel appearing for respondents 8 to 10 as instructed by Sri. P.V Elias, Sri.Manu George Kuruvila, the learned counsel appearing for the 11<sup>th</sup> respondent and Sri.C.A.Navas, the learned counsel appearing for Additional respondent No.12 and 13.

3. It is submitted by the learned Senior Counsel appearing for the petitioners that the St.John's Besphage Orthodox Church, Pulinthanam is one of the churches of the Malankara Orthodox Syrian Church and is included as Serial No.780 in the list of 1064 churches annexed to O.S.No.4 of 1979 under the Sabha.
4. It is stated that pursuant to a factional dispute in 1974, a suit was filed as O.S No.378/1975 before the Munsiff Court, Muvattupuzha for declaration that the 1<sup>st</sup> defendant church therein is to be governed as administered under 1934 Constitution. 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.25/1977 on the files of the 1<sup>st</sup> Additional District Court, Ernakulam. The same was later withdrawn with liberty to

institute a fresh suit. Later O.S No.16/1979 was filed before the Munsiff Court, Muvattupuzha by the parishioners of the Church for a declaration that 1<sup>st</sup> defendant therein is to be governed by the provisions of 1934 Constitution. 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.3/1979 on the files of the 1<sup>st</sup> Additional District Court, Ernakulam. The same was later dismissed for want of leave under Section 92 of the Code of Civil Procedure, 1908. An appeal was filed against the judgment and the same was subsequently withdrawn. Later a suit was filed as O.S No.15/2016 before the Sub Court, Muvattupuzha after seeking leave under Section 92 of the Code of Civil Procedure, 1908 which was decreed by Ext. P32 judgment. It is submitted that even thereafter, the church is under parallel administration. Against Ext.P32, the defendants files R.F.A. No.187/2022. An interim order passed in the said RFA was also not complied by the respondents and there were subsequent obstructions and the petitioners filed complaints as evidenced by Exts.P38 and P40. The appeal was finally

heard and dismissed by Ext.P41 judgment.

5. 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.

6. 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)**.

7. 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].

8. Respondents 8 to 10 have filed a counter affidavit contending that the 8<sup>th</sup> respondent is the vicar of the St. Johns Besphage Jacobite Syrian Church, Pulinthanam, which is wrongly stated in the writ petition as St.Johns Besphage Orthodox Church, Pulinthanam and that 9<sup>th</sup> and 10<sup>th</sup> respondents are the trustees of the Church. It is contended that there are two different churches at Pulinthanam and that the church is not included in the list of 1064 churches as stated by the petitioners. It is contended that the petitioners 1 and 2 are not the vicar and assistant vicar of the Church and that petitioners 3 and 4 are not the trustee and secretary of the Church and that they are total strangers to the church. It is also submitted that the writ petition is bad for non-joinder of necessary

parties. It is submitted that civil suit is pending and that the writ petition is not maintainable.

9. An additional counter affidavit has also been placed on record by respondents 8 to 10.

10. Reply affidavits and additional reply affidavits to counter affidavit filed by Respondents 8 to 10 have been placed on record by the petitioners contending that they are not total strangers to the church and that church is not a necessary party to this writ petition. It is also stated that pendency of a civil suit is not a bar for the petitioners to file writ petition. Exhibits P23, P24 and P25 are the Kalpanas appointing the petitioners 1 and 2 as the Vicar and Assistant Vicar.

11. The learned Senior Counsel appearing for the contesting respondents submits that the prayers in the writ petition are to invoke the provisions of the Kerala Police Act. It is submitted that the Kerala Police Act is a codification of the law relating to the establishment, regulation, powers and duties of the police force in the State of Kerala and is essentially a codification of the administrative functions of the police. It is,

therefore, contended that it is beyond comprehension how the prayers, as sought for, are maintainable at all before a Constitutional Court. It is submitted that there is no specific command of the Statute in the Police Act, which is liable to be enforced by a writ of mandamus by a Constitutional Court. It is submitted that where specific complaints have been made with regard to the requirement for police protection, such protection is being voluntarily made available by the police and that there is absolutely no requirement for a writ petition of this nature. It is further contended that there is no law and order situation, which requires the intervention of the police and that the writ petition is, therefore, completely misconceived.

12.The learned Senior Counsel would also refer to paragraph Nos.4 to 6 of the additional affidavit filed by the respondents on 19<sup>th</sup> September, 2022 and contend that there is absolutely no occasion for the invocation of the provisions of the Kerala Police Act. It is submitted that the allegations of demolition of structures, vandalism, theft etc. committed by the party respondents is completely incorrect and misconceived. It is

submitted that there was an attempt of theft and a criminal case is charge-sheeted against the accused as C.C.No.525/2017 and is pending before the JFCM Court, Kothamangalam. It is submitted that the church was reconstructed by the parishioners during the period from 1999 to 2003 and the petitioners had filed a suit as O.S. No.31/1999 before the First Additional District Court, Ernakulam. The same was dismissed by Ext.R8(B) judgment. It is contended that the petitioners are complete strangers to the church and the contention that the declaration of law in **K.S.Varghese's** case applies to the instant case is completely misconceived.

13.The learned Additional Advocate General submits 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 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.

14. Having considered the contentions advanced, it is pertinent to note the nature and content of the judgment rendered by the Apex Court in **K.S.Varghese's** case (cited supra). The Apex Court was considering three civil appeals arising in respect of constituent churches under the Malankara Church. After considering the entire gamut of arguments raised and after hearing the parties concerned, the Apex Court laid down the principles of law and encapsulated them in the directions as contained in paragraph No.184 of the judgment which reads as follows:-

“184. Resultantly, based on the aforesaid findings in the judgment, our main conclusions, inter alia, are as follows :

(i) Malankara Church is Episcopal in character to the extent it is so declared in the 1934 Constitution. The 1934 Constitution fully governs the affairs of the Parish Churches and shall prevail.

(ii) The decree in the 1995 judgment is completely in tune with the judgment. There is no conflict between the judgment and the decree.

(iii) The 1995 judgment arising out of the representative suit is

binding and operates as res judicata with respect to the matters it has decided, in the wake of provisions of Order I Rule 8 and Explanation 6 to S.11 CPC. The same binds not only the parties named in the suit but all those who have interest in the Malankara Church. Findings in earlier representative suit, i.e., Samudayam suit are also binding on Parish Churches/Parishioners to the extent issues have been decided.

(iv) As the 1934 Constitution is valid and binding upon the Parish Churches, it is not open to any individual Church, to decide to have their new Constitution like that of 2002 in the so-called exercise of right under Articles 25 and 26 of the Constitution of India. It is also not permissible to create a parallel system of management in the churches under the guise of spiritual supremacy of the Patriarch.

(v) The Primate of Orthodox Syrian Church of the East is Catholicos. He enjoys spiritual powers as well, as the Malankara Metropolitan. Malankara Metropolitan has the prime jurisdiction regarding temporal, ecclesiastical and spiritual administration of Malankara Church subject to the riders provided in the 1934 Constitution.

(vi) Full effect has to be given to the finding that the spiritual power of the Patriarch has reached to a vanishing point. Consequently, he cannot interfere in the governance of Parish Churches by appointing Vicar, Priests, Deacons, Prelates (High Priests) etc. and thereby cannot create a parallel system of administration. The appointment has to be made as per the power conferred under the 1934 Constitution on the concerned Diocese, Metropolitan etc.

(vii) Though it is open to the individual member to leave a Church

in exercise of the right not to be a member of any Association and as per Article 20 of the Universal Declaration of Human Rights, the Parish Assembly of the Church by majority or otherwise cannot decide to move church out of the Malankara Church. Once a trust, is always a trust.

(viii) When the Church has been created and is for the benefit of the beneficiaries, it is not open for the beneficiaries, even by a majority, to usurp its property or management. The Malankara Church is in the form of a trust in which, its properties have vested. As per the 1934 Constitution, the Parishioners though may individually leave the Church, they are not permitted to take the movable or immovable properties out of the ambit of 1934 Constitution without the approval of the Church hierarchy.

(ix) The spiritual power of Patriarch has been set up by the appellants clearly in order to violate the mandate of the 1995 judgment of this Court which is binding on the Patriarch, Catholicos and all concerned.

(x) As per the historical background and the practices which have been noted, the Patriarch is not to exercise the power to appoint Vicar, Priests, Deacons, Prelates etc. Such powers are reserved to other authorities in the Church hierarchy. The Patriarch, thus, cannot be permitted to exercise the power in violation of the 1934 Constitution to create a parallel system of administration of Churches as done in 2002 and onwards.

(xi) This Court has held in 1995 that the unilateral exercise of such power by the Patriarch was illegal. The said decision has also been violated. It was only in the alternative this Court held in the 1995 judgment that even if he has such power, he could not have

exercised the same unilaterally which we have explained in this judgment.

(xii) It is open to the Parishioners to believe in the spiritual supremacy of Patriarch or apostolic succession but it cannot be used to appoint Vicars, Priests, Deacons, Prelates etc., in contravention of the 1934 Constitution.

(xiii) Malankara Church is Episcopal to the extent as provided in the 1934 Constitution, and the right is possessed by the Diocese to settle all internal matters and elect their own Bishops in terms of the said Constitution.

(xiv) Appointment of Vicar is a secular matter. There is no violation of any of the rights encompassed under Articles 25 and 26 of the Constitution of India, if the appointment of Vicar, Priests, Deacons, Prelates (High Priests) etc., is made as per the 1934 Constitution. The Patriarch has no power to interfere in such matters under the guise of spiritual supremacy unless the 1934 Constitution is amended in accordance with law. The same is binding on all concerned.

(xv) Udampadis do not provide for appointment of Vicar, Priests, Deacons, Prelates etc. Even otherwise once the 1934 Constitution has been adopted, the appointment of Vicar, Priests, Deacons, Prelates (high priests) etc., is to be as per the 1934 Constitution. It is not within the domain of the spiritual right of the Patriarch to appoint Vicar, Priests etc. The spiritual power also vests in the other functionaries of Malankara Church.

xvi) The functioning of the Church is based upon the division of responsibilities at various levels and cannot be usurped by a single individual howsoever high he may be. The division of powers under



the 1934 Constitution is for the purpose of effective management of the Church and does not militate against the basic character of the church being Episcopal in nature as mandated thereby. The 1934 Constitution cannot be construed to be opposed to the concept of spiritual supremacy of the Patriarch of Antioch. It cannot as well, be said to be an instrument of injustice or vehicle of oppression on the Parishioners who believe in the spiritual supremacy of the Patriarch.

(xvii) The Church and the Cemetery cannot be confiscated by anybody. It has to remain with the Parishioners as per the customary rights and nobody can be deprived of the right to enjoy the same as a Parishioner in the Church or to be buried honourably in the cemetery, in case he continues to have faith in the Malankara Church. The property of the Malankara Church in which is also vested the property of the Parish Churches, would remain in trust as it has for the time immemorial for the sake of the beneficiaries and no one can claim to be owners thereof even by majority and usurp the Church and the properties.

(xviii) The faith of Church is unnecessarily sought to be divided vis-a-vis the office of Catholicos and the Patriarch as the common faith of the Church is in Jesus Christ. In fact an effort is being made to take over the management and other powers by raising such disputes as to supremacy of Patriarch or Catholicos to gain control of temporal matters under the garb of spirituality. There is no good or genuine cause for disputes which have been raised.

(xix) The authority of Patriarch had never extended to the government of temporalities of the Churches. By questioning the action of the Patriarch and his undue interference in the

administration of Churches in violation of the 1995 judgment, it cannot be said that the Catholicos faction is guilty of repudiating the spiritual supremacy of the Patriarch. The Patriarch faction is to be blamed for the situation which has been created post 1995 judgment. The property of the Church is to be managed as per the 1934 Constitution. The judgment of 1995 has not been respected by the Patriarch faction which was binding on all concerned. Filing of Writ Petitions in the High Court by the Catholicos faction was to deter the Patriarch/his representatives to appoint the Vicar etc., in violation of the 1995 judgment of this Court.

(xx) The 1934 Constitution is enforceable at present and the plea of its frustration or breach is not available to the Patriarch faction. Once there is Malankara Church, it has to remain as such including the property. No group or denomination by majority or otherwise can take away the management or the property as that would virtually tantamount to illegal interference in the management and illegal usurpation of its properties. It is not open to the beneficiaries even by majority to change the nature of the Church, its property and management. The only method to change management is to amend the Constitution of 1934 in accordance with law. It is not open to the Parish Churches to even frame by-laws in violation of the provisions of the 1934 Constitution.

(xxi) The Udampadies of 1890 and 1913 are with respect to administration of Churches and are not documents of the creation of the Trust and are not of utility at present and even otherwise cannot hold the field containing provisions inconsistent with the 1934 Constitution, as per S.132 thereof. The Udampady also cannot hold the field in view of the authoritative pronouncements

made by this Court in the earlier judgments as to the binding nature of the 1934 Constitution.

(xxii) The 1934 Constitution does not create, declare, assign, limit or extinguish, whether in present or future any right, title or interest, whether vested or contingent in the Malankara Church properties and only provides a system of administration and as such is not required to be registered. In any case, the Udampadis for the reasons already cited, cannot supersede the 1934 Constitution only because these are claimed to be registered.

(xxiii) In otherwise Episcopal church, whatever autonomy is provided in the Constitution for the Churches is for management and necessary expenditure as provided in S.22 etc.

(xxiv) The formation of 2002 Constitution is the result of illegal and void exercise. It cannot be recognized and the parallel system created thereunder for administration of Parish Churches of Malankara Church cannot hold the field. It has to be administered under the 1934 Constitution.

(xxv) It was not necessary, after amendment of the plaint in Mannathur Church matter, to adopt the procedure once again of representative suit under Order I Rule 8 C.P.C. It remained a representative suit and proper procedure has been followed. It was not necessary to obtain fresh leave.

(xxvi) The 1934 Constitution is appropriate and adequate for management of the Parish Churches, as such there is no necessity of framing a scheme under S.92 of the C.P.C.

(xxvii) The plea that in face of the prevailing dissension between the two factions and the remote possibility of reconciliation, the religious services may be permitted to be conducted by two Vicars

of each faith cannot be accepted as that would amount to patronizing parallel systems of administration.

(xxviii) Both the factions, for the sake of the sacred religion they profess and to preempt further bickering and unpleasantness precipitating avoidable institutional degeneration, ought to resolve their differences if any, on a common platform if necessary by amending the Constitution further in accordance with law, but by no means, any attempt to create parallel systems of administration of the same Churches resulting in law and order situations leading to even closure of the Churches can be accepted”.

15. Thereafter, in **St. Mary's Orthodox Church v. The State Police Chief** [2019 (3) KLT 419 SC], the Apex Court after referring to the judgment in **K.S. Varghese** (cited supra) held as follows:

“There cannot be any violation of the order by any one concerned. Even the State Government cannot act contrary to the judgment and the observations made by this Court and has the duty to ensure that the judgment of the court is implemented forthwith.

Any observation made by the High Court contrary to the judgment passed by this Court stands diluted.

The State and all parties shall abide by the judgment passed by this Court in totality and cannot solve the matter in any manner different than the judgment passed by this court. No parallel system can be created.”

16. Therefore, it is clear that in so far as the constituent parish churches of the Malankara Church are concerned, all questions stand settled by the judgment of the Apex Court. A *judgment in rem* means and includes a declaratory judgment of the status of some subject matter. The judgment is conclusive in respect of the case or class of cases to which it is made applicable in general. "An act or proceeding is in rem when it is done or directed regarding no specific persons and consequently against or concerning all whom it might concern or all the world" (P. Ramanatha Aiyar's Advanced Law Lexicon dictionary).

17. It is, therefore, clear that in so far as the constituent parish churches are concerned, the judgment of the Apex Court in **K.S. Varghese** (cited supra) is a *judgment in rem*. This is amply clarified by the Apex Court in its later judgments and orders including in **St. Mary's Orthodox v. State Police Chief** (cited supra).

18. The further contention raised by the contesting party

respondents that the church in question is not a constituent church also cannot be accepted in view of the fact that the St.John's Besphage Orthodox Church is admittedly a constituent church. The contentions of the respondents are to the effect that there has been an ordaining of priests and prelates by them and that the church has, therefore, become a Jacobite church. These aspects of the matter have been given a quietus by the Apex Court. In later SLPs also, the Apex Court has specifically held that all courts and authorities are to act in terms of the judgment in **K.S.Varghese**.

19.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 a representative suit has now to be filed and a decree obtained before the directions of the Apex Court in **K.S. Varghese** have to be given effect to is completely unsustainable. 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.

20. 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.

21.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.

22. 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.

23.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.

24.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.

25. In the result, this writ petition is allowed. There will be a direction to the 7<sup>th</sup> respondent to render necessary assistance to petitioners 1 and 2, Priests, Vicars, Diocesan Metropolitan, Malankara Metropolitan etc. to peacefully enter the St. John's Besphage Orthodox Church in accordance with the 1934 Constitution and to conduct the religious services therein without let or hindrance 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**

sj

**APPENDIX OF WP(C) 25645/2019**

PETITIONER EXHIBITS

- Exhibit P29 TRUE COPY OF THE JUDGMENT DTD.  
18.03.2021 IN OP (C) NO. 1406/2020 ON  
THE FILES OF THIS HON'BLE COURT.
- Exhibit P30 TRUE COPY OF THE ORDER DTD. 14.02.2020  
IN MISCELLANEOUS APPLICATION NO.2554-  
2555 OF 2019 IN CIVIL APPEAL NO.7115-  
7116 OF 2019 ON THE FILES OF THE HON'BLE  
SUPREME COURT.
- Exhibit P31 TRUE COPY OF THE JUDGMENT DTD.  
30.05.2022 IN O.P. (C) NO.881 OF 2022 ON  
THE FILES OF THIS HON'BLE COURT.
- Exhibit P32 TRUE COPY OF THE JUDGMENT DTD.  
08.07.2022 IN O.S NO. 15/2016 ON THE  
FILES OF SUB COURT, MUVATTUPUZHA.
- Exhibit P33 TRUE COPY OF ORDER DTD. 29.08.2022 IN IA  
NO. 1/2022 IN RFA NO. 187/2022 ON THE  
FILES OF THIS HON'BLE COURT.
- Exhibit P34 TRUE COPY OF THE NEWSPAPER REPORT CAME  
IN MALAYALA MANORAMA DAILY ON 14.09.2022  
REGARDING THE OBSTRUCTION CAUSED BY THE  
PATRIARCH FACTION TO LAWFUL VICARS  
APPOINTED UNDER THE 1934 CONSTITUTION.
- Exhibit P35 TRUE COPY OF THE NEWSPAPER REPORT CAME  
IN MATHRUBHUMI DAILY ON 14.09.2022  
REGARDING THE OBSTRUCTION CAUSED BY THE  
PATRIARCH FACTION TO LAWFUL VICARS  
APPOINTED UNDER THE 1934 CONSTITUTION.
- Exhibit P36 TRUE COPY OF THE NEWSPAPER REPORT CAME  
IN MANGALAM DAILY ON 14.09.2022  
REGARDING THE OBSTRUCTION CAUSED BY THE

PATRIARCH FACTION TO LAWFUL VICARS  
APPOINTED UNDER THE 1934 CONSTITUTION.

- Exhibit P37 TRUE COPY OF THE COMPLAINT DTD.  
13.09.2022 SUBMITTED BEFORE THE SHO,  
POTHANICADU POLICE STATION.
- Exhibit P38 TRUE COPY OF ACKNOWLEDGMENT RECEIPT  
BEARING PETITION NO. 143427/2022 DTD.  
14.09.2022 ACKNOWLEDGING RECEIPT OF  
EXT.P37 ISSUED FROM POTHANICADU POLICE  
STATION.
- Exhibit P39 TRUE COPY OF THE COMPLAINT DTD.  
28.12.2022.
- Exhibit P40 TRUE COPY OF THE FIR BEARING NO.  
0003/2023 POTHANIKKAD POLICE STATION.
- Exhibit P41 TRUE COPY OF THE JUDGMENT OF THE  
DIVISION BENCH OF THIS HON'BLE COURT  
DTD. 24.01.2023 IN RFA NO. 187/2022.
- EXHIBIT P12 TRUE COPY OF THE COMPLAINT DATED  
10/08/2019 SUBMITTED BY THE 1ST  
PETITIONER TO THE 7TH RESPONDENT.
- EXHIBIT P12 TRUE COPY OF THE REQUEST DATED  
10/08/2019 ISSUED BY THE 7TH RESPONDENT  
ACKNOWLEDGING THE RECEIPT OF EXT.P13.
- EXHIBIT P13 TRUE COPY OF THE COMPLAINT DATED  
11/08/2019 SUBMITTED BY THE PETITIONERS  
1, 3 AND 4 BEFORE THE 7TH RESPONDENT.
- EXHIBIT P13 TRUE COPY OF ACKNOWLEDGMENT OF THE  
COMPLAINT DATED 11/08/2019.
- EXHIBIT P14 TRUE COPY OF THE COMPLAINT DATED  
12/08/2019 SUBMITTED BY THE PETITIONERS

1 AND 2.

EXHIBIT P14 TRUE COPY OF THE RECEIPT.

EXHIBIT P15 TRUE COPY OF THE COMPLAINS DATED  
14/08/2019.

EXHIBIT P15 TRUE COPY OF THE RECEIPT ISSUED BY THE  
7TH RESPONDENT ON 14/08/2018.

EXHIBIT P16 TRUE COPY OF THE REPRESENTATION DATED  
16/08/2019 SUBMITTED BY THE 1ST  
PETITIONER VIA REGISTERED POST AS WELL  
AS E-MAIL.

EXHIBIT P17 TRUE COPY OF THE REPORT DATED 20/08/2019  
SUBMITTED BY THE 5TH RESPONDENT TO THE  
3RD RESPONDENT ALONG WITH THE COVERING  
LETTER.

EXHIBIT P18 TRUE COPY OF THE ORDER DATED 06/09/2019  
IN CIVIL APPEAL NOS. 7115-7116/2019  
ARISING FROM SLP(C) NOS. 20661-  
20662/2019.

EXHIBIT P19 TRUE COPY OF THE REPRESENTATION DATED  
11/10/2019 SUBMITTED BY THE PETITIONERS  
BEFORE THE 7TH RESPONDENT.

EXHIBIT P20 TRUE COPY OF THE KALPANA BEARING  
NO.AD/YMP/64/2017 DATED 07/08/2017.

EXHIBIT P21 TRUE COPY OF LEASE DEED BEARING  
NO.1451/1/2019 DATED 08/08/2019 OF  
POTHANICAD SUB REGISTRAR OFFICE.

RESPONDENT EXHIBITS

EXHIBIT R8 (A) TRUE COPY OF THE JUDGMENT DATED  
17.06.2014 IN A.S.NO.234/2001 OF THE

HONBLE HIGH COURT OF KERALA.

PETITIONER EXHIBITS

EXHIBIT P1 TRUE COPY OF THE ORDER DATED 19/04/2018  
IN CIVIL APPEAL NO.3986-3989/2018.

RESPONDENT EXHIBITS

EXHIBIT R8 (C) TRUE COPY OF THE JUDGMENT DATED  
29.07.2016 IN O.S.NO.32/2015 ON THE FILE  
OF THE SUB COURT MUVATTUPUZHA.

PETITIONER EXHIBITS

EXHIBIT P23 TRUE COPY OF KALPANA BEARING NO.214/78  
DATED 22.12.1978.

EXHIBIT P24 TRUE COPY OF KALPANA BEARING NO.142/2002  
DATED 15.11.2002.

EXHIBIT P25 TRUE COPY OF KALPANA BEARING  
NO.AD/YMP/74/2018 DATED 15.08.2018 DATED  
15.08.2018.

EXHIBIT P26 TRUE COPY OF THE KALPANA BEARING  
NO.77/2009 DATED 26.9.2009.

RESPONDENT EXHIBITS

EXHIBIT R8 (B) TRUE COPY OF THE JUDGMENT DATED  
31.08.2002 IN O.S.NO.31/1999 ON THE FILE  
OF THE 1ST ADDITIONAL DISTRICT COURT  
ERNAKULAM.

PETITIONER EXHIBITS

EXHIBIT P2 TRUE COPY OF THE ORDER DATED 08/04/2019  
IN SLP(C) NO.8303/2019.

- EXHIBIT P3 TRUE COPY OF ORDER DATED 02/07/2019 IN SLP(C) NO.12461.
- EXHIBIT P4 TRUE COPY OF THE REPRESENTATION DATED 17/05/2019 SUBMITTED BY THE 3RD PETITIONER TO RESPONDENTS 1 TO 4 AND 7.
- EXHIBIT P5 TRUE COPY OF THE COMMUNICATION ISSUED FROM THE POLICE HEADQUARTERS WITH ENDORSEMENT NO.U6-110624/2017/PHQ DATED 10/06/2019.
- EXHIBIT P6 TRUE COPY OF THE ENDORSEMENT NO.26683/2019/E DATED 10/06/2019 ISSUED BY THE POLICE DEPARTMENT.
- EXHIBIT P7 TRUE COPY OF REPRESENTATION DATED 30/07/2019 SUBMITTED BY THE PETITIONER HEREIN TO THE 7TH RESPONDENT.
- EXHIBIT P8 TRUE COPY OF THE ACKNOWLEDGMENT DATED 01/08/2019 ACKNOWLEDGING THE RECEIPT OF EXT.P7 ISSUED FROM THE OFFICE OF THE 7TH RESPONDENT.
- EXHIBIT P9 TRUE COPY OF THE NOTICE DATED 06/08/2019 ISSUED BY THE 7TH RESPONDENT TO 8TH RESPONDENT.
- EXHIBIT P9 TRUE COPY OF THE NOTICE DATED 06/08/2019 ISSUED BY THE 7TH RESPONDENT TO 9TH RESPONDENT UNDER SECTION 63(B) OF THE KERALA POLICE ACT.
- EXHIBIT P9 TRUE COPY OF THE NOTICE DATED 06/08/2019 ISSUED BY THE 7TH RESPONDENT TO 10TH RESPONDENT UNDER SECTION 63(B) OF THE KERALA POLICE ACT.
- EXHIBIT P10 TRUE COPY OF THE JUDGMENT DATED 03/01/2019 IN WPC NO. 30474/2018.

EXHIBIT P11

TRUE COPY OF THE REFERENCE ORDER DATED  
16/07/2019 IN CONTEMPT CASES  
NO.866/2019.

True copy

PS to Judge