

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. 27219 OF 2019

PETITIONERS:

- 1 ST MARYS ORTHODOX SYRIAN CHURCH  
POOTHRIKKA KARA, AIKKARANADU SOUTH VILLAGE,  
KUNNATHUNADU TALUK, REP. BY ITS VICAR, FR. ABY  
ULAHANNAN.
- 2 FR. ABY ULAHANNAN,  
AGED 36 YEARS  
S/O ULAHANNAN, PARACHALIL  
HOUSE, THATTAKUZHA. P.O, THODUPUZHA, VICAR, ST. MARY'S  
SYRIAN ORTHODOX CHURCH, POTHIRKKA KARA.
- 3 JOSSY P. JACOB,  
AGED 48 YEARS  
S/O. K. J. CHACKO, CHETTIKUZHIYIL HOUSE,  
(KAVANAMOLAYIL), POOTHRIKKA KARA, AIKKARANADU SOUTH  
VILLAGE, KUNNATHUNADU TALUK.
- 4 JOHN KURIAKOSE,  
AGED 64 YEARS  
THOZHUTHUNKAL HOUSE, POOTHRIKKA KARA, AIKKARNADU  
SOUTH VILLAGE, KUNNATHUNADU TALUK.

BY ADVS.  
S. SREEKUMAR (SR.)  
P. MARTIN JOSE  
P. PRIJITH  
THOMAS P. KURUVILLA  
R. GITESH  
SMT. HANI P. NAIR

**RESPONDENTS :**

- 1 STATE OF KERALA  
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 THE DISTRICT COLLECTOR,  
ERNAKULAM, CIVIL STATION, KAKKANAD-682030.
- 3 THE STATE POLICE CHIEF,  
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM-695001.
- 4 THE DISTRICT POLICE CHIEF,  
ERNAKULAM RURAL, ALUVA-683101.
- 5 THE DEPUTY SUPERINTENDENT OF POLICE,  
MUVATTUPUZHA-686661.
- 6 THE STATION HOUSE OFFICER,  
PUTHENCRUZ POLICE STATION, PUTHENCRUZ-682308.
- 7 P.M. POULOSE,  
AGED 60 YEARS  
S/O MARKOSE, PULICHOTTIL  
HOUSE, POOTHRIKKA, AIKKANARADU SOUTH  
VILLAGE, KUNNATHUNADU TALUK, PIN-686662.
- 8 BIJU.M.PAUL,  
AGED 45 YEARS  
S/O. POULOSE, MULLAKKAL HOUSE, POOTHRIKKA.P.O, PIN-  
682308.
- 9 JOHNY VARGHESE,  
AGED 42 YEARS  
S/O.VARGHESE, MANDENKUZHIYIL HOUSE,  
POOTHRIKKA.P.O, PIN-682308.

10 PHILIP,  
AGED 55 YEARS  
S/O.KURIYAKOSE, THOZHUTHUNKAL, POOTHRIKKA.P.O, PIN-  
682308.

11 BENNY,  
AGED 42 YEARS  
S/O.KURIAN, KUPPLASSERI HOUSE, POOTHRIKKA.P.O, PIN-  
682308.

12 FR.BINU YOHANNAN,  
CHUNDAKATTUMALAYIL HOUSE, KUNNAKKAL.P.O, ERNAKULAM  
DISTRICT, PIN-682001.

Addl.R13 MANU KURIAN THURUTHEL  
AGED 49 YEARS,  
S/O.LATE KURIANKURIAN THURUTHEL,  
RESIDING AT THURUTHEL, 149, PLOT NO.998, 6TH  
AVENUE, ANNA NAGAR, CHENNAI.

ADL.R14 LT.COL. PAUL VARGHESE, aged 86,  
S/O.N.P.VARGHESE, 28  
SUYAJANA SOCIETY,  
NEAR KOREGAON PARK, PUNE PICODE 411 001.

BY ADVS.

SHRI.ASOK M.CHERIAN, ADDL. ADVOCATE GENERAL  
SRI.P.VISWANATHAN (SR.)  
SRI.G.SREEKUMAR (CHELUR)  
MATHEWS J.NEDUMPARA  
K.P.SUDHEER  
SRI.AJITH VISWANATHAN  
MARIA NEDUMPARA  
ABDUL JABBARUDEEN.M  
P.K.SURESH KUMAR (SR.)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 10.01.2023, THE COURT ON 13.4.2023 WRIT  
PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON DELIVERED  
THE FOLLOWING:

**ANU SIVARAMAN, J.**

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**W.P.(c).No.27219 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 St.Mary's Orthodox Syrian Church, Poothrikka, Aikkaranadu Village, Kunnathunadu Taluk, Ernakulam District represented by its Vicar and the trustees of the church seeking directions to respondents 1 to 6 to afford adequate protection to the 2<sup>nd</sup> petitioner to conduct religious services in the 1<sup>st</sup> petitioner Church, its cemetery and chapels and to petitioners 3 and 4 and to Parishioners of the Church in participating in such religious services without any obstruction, interruption or hindrance from respondents 7 to 12, 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 1<sup>st</sup> petitioner Church, its parish hall, 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.Sri.P. Martin Jose, Sri.Asok M. Cherian, the learned Additional Advocate General as well as Sri.P.Viswanathan, learned Senior Counsel appearing for respondent No.7, as instructed by Adv.Sri. Shibu Joseph, Sri.P.K.Suresh Kumar, the learned Senior Counsel appearing for the additionally impleaded respondent No.14 as instructed by Adv.Sri.K.P. Sudheer, Adv.Mathews J Nedumpara, the learned counsel appearing for the additionally impleaded 13<sup>th</sup> respondent and Sri.G.Sreekumar Chellur, the learned counsel appearing for respondents 8 to 12.

3. It is submitted by the learned Senior Counsel appearing for the petitioners that the 1<sup>st</sup> petitioner Church is one of the churches of the Malankara Orthodox Syrian Church and is included as Serial No.684 in the list of 1064 churches annexed

to O.S.No.4/1979 under the Sabha. Ext.P4 is the Kalpana of the Diocesan Metropolitan, Kandanad East appointing the 2<sup>nd</sup> petitioner as the Vicar of the 1<sup>st</sup> petitioner Church. It is submitted that respondents 7 to 12 are the members of Jacobite/ 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 stated that there were suits filed as O.S.No.52 of 2003 under Order I Rule 8 and O.S.No.17 of 2003 before the Additional District Court (Special Court assigned for handling church cases) and they were jointly tried and disposed by Ext.P3 judgment as follows: O.S.No.52 of 2003 was decreed as follows:-

“ 1. It is decreed that D1 church is liable to be governed and administered under the 1934 constitution of Malankara Church and the second plaintiff is its lawful vicar.

2. D2 and D3 their men and agents are restrained by a perpetual injunction from obstructing the 2<sup>nd</sup> plaintiff or any other vicar or vicars appointed by the Metropolitan of Kandanad East Diocese in

accordance with 1934 Constitution in the discharge of their duties as Vicars of D1 Church.

3. D4 and D5 or anybody not appointed by the Diocesan Metropolitan of Kadanad East Diocese are also restrained by perpetual injunction from discharging the duties of Vicars of the Church.”

5. It is submitted that O.S.No.17 of 2002 was decreed in part with costs restraining D4 and D5 from entering into D1 church or conducting holy mass or any other ecclesiastical functions in violation of the 1934 constitution. It was made clear that the decree passed in the suit shall not bind all interested persons as provided under Order I Rule 8 (6) C.P.C and will only be personal decree against the defendants.

6. As against Ext.P3 judgment an appeal was filed as R.F.A 318 of 2019 before this Court. 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. The Civil Appeals filed in

St.Mary's Church, Piravom were also disposed of by Ext.P7 order, which reads as follows :-

“As the controversy in question has been finally decided in the case of K.S.Varghese Vs. St.Peter's & Paul's Syrian Orth. & Ors. in C.A.No.3674 of 2015 etc. decided on 3<sup>rd</sup> 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.”

7. It is submitted that after Ext.P3 judgment respondents 7 to 12, who are not parishioners of the 1<sup>st</sup> petitioner church, have been obstructing the 2<sup>nd</sup> petitioner in conducting religious services and the parishioners from conducting religious services. It is submitted that respondents were sitting inside the church, locking the gate and thereby physically preventing the members of the Malankara church from enjoying the benefits of Exhibit P3 judgment. Since the 2<sup>nd</sup> petitioner is the lawfully appointed Vicar as per the 1934 Constitution, he is



entitled to, to discharge his duties as such. However, respondents 7 to 12 and their men forcefully prevented the 2<sup>nd</sup> 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.

8. It is also submitted that as per the order of this Court on 12.08.2020, the 1<sup>st</sup> petitioner church is under the lock and key of the 6<sup>th</sup> respondent. It is also contended that the police allowed the party respondents to occupy the parish hall of the church and that respondents have erected temporary structures separating the church from the parish hall and are conducting holy mass.

9. Respondent No.7 has placed counter affidavit and additional counter affidavit on record contending that the suits were disposed of by the District Court, Ernakulam on a wrong interpretation of fact and law and that the appeal filed against O.S.No.17/2002 and O.S 52/2003 are pending consideration before this Court.

10.It is also submitted that the 1<sup>st</sup> petitioner church is not included in the list of 1064 churches and that the 2<sup>nd</sup> petitioner cannot claim any right as vicar of the church. It is submitted that respondents 10 and 11 are parishioners of the church and they have not at any point of time claimed that they are priests. It is also contended that there is no parish hall for the church and that in the northern side of the church there is a building belonging to one Paul Varghese and that the 1<sup>st</sup> petitioner church is only having property covered by Ext.R7(d). It is contended that petitioners are trying to grab the property belonging to other persons also.

11.The learned Senior Counsel appearing for the additional 14<sup>th</sup> respondent submits that the prayers in the writ petition are

totally misconceived and that the writ petition is not maintainable. It is submitted that the church in question is already under the administration of the petitioners and the present attempt is only to vest the possession and ownership of a property and building which is not under the ownership, possession or administration of the church. It is submitted that the property sought to be taken possession of is 45 cents of land comprised in Re. Sy No. 181/16 of Aikkaranadu South Village, Ernakulam District. It is submitted that the additional 14<sup>th</sup> respondent is a retired Colonel settled in Pune. The property in question was gifted by the father of the additional 14<sup>th</sup> respondent in favour of Geevarghese Kathanaar for setting up of Martha Mariam Retreat Centre. If the centre is not set up, the property would revert to the donor and thereafter, by succession. It is submitted that the property is in no way the part of the properties of the church and is specifically covered by a different document. A copy of the said document is produced as Ext.R14(a). On the ground that he is the owner of the property, the 14<sup>th</sup> respondent seeks to vacate the interim order dated 24.11.2021 to the extent it

relates to the 45 cents of the property covered by Exhibit R14(a) document. An I.A has also been filed for modification of the interim order, deleting the observations and directions made in respect of the property covered Exhibit R14(a).

12. A counter affidavit to the above I.A. has also been filed by the petitioners contending that there are five buildings in the compound having assigned door numbers by the local authority and the parish hall is Door No.494/10 of Poothrikka Panchayat assessed in the name of the 1<sup>st</sup> petitioner church. It is submitted that the property now claimed by the petitioner in I.A. is not the property described in document No.1490 of 1954 and that the property is part of the property of the 1<sup>st</sup> petitioner church and is being managed under 1934 Constitution.

13.The learned Government Pleader has placed a memo on record stating that the administration of the church and its properties have been handed over to the petitioners, but that the property covered by Exhibit R14(a) has not been taken possession of in view of the the disputes raised.

14. Having considered the contentions advanced, I am of the opinion that in view of the fact that the church in question is a constituent Parish Church of the Malankara Church and the judgment of the Apex Court in **K.S.Varghese** is applicable to the church and its properties as well. However, with regard to the properties covered by Exhibit R14(a) document, the contentions raised that the property is not part of the property of the church appears to be a *bona fide* dispute raised and therefore the issue cannot be decided in these proceedings. Leaving open the contentions of the parties to be decided in appropriate proceedings, this writ petition is closed, in terms of the directions issued in the interim dated 24.11.2021 except to the extent it relates to the property covered by Exhibit R14(a). The contention of the parties with regard to the said property are left open.

sd/-

**Anu Sivaraman, Judge**

**APPENDIX OF WP(C) 27219/2019**

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE MANAGING COMMITTEE HELD ON 9TH AND 10TH AUGUST 2002
- EXHIBIT P2 TRUE COPY OF KALPALNA NO.134 OF 2002 DATED 12.08.2002
- EXHIBIT P3 TRUE COPY OF COMMON JUDGMENT IN O.S.NO.17 OF 2002 AND O.S.NO.52 OF 2003 DATED 30.03.2019 OF 1ST ADDITIONAL DISTRICT COURT, ERNAKULAM
- EXHIBIT P4 TRUE COPY OF KALPANA NO.21/2019 DATED 11.06.2019
- EXHIBIT P5 TRUE COPY OF JUDGMENT DATED 19.04.2018 IN S.L.P. (C) NOS.33156 TO 33159 OF 2014 OF HON'BLE SUPREME COURT
- EXHIBIT P6 TRUE COPY OF ORDER IN CIVIL APPEAL NO.7115 OF 2019 DATED 06.09.2019 OF HON'BLE SUPREME COURT
- EXHIBIT P7 TRUE COPY OF REPRESENTATION DATED 17/07/2019 SUBMITTED BY THE 2ND PETITIONER BEFORE THE RESPONDENTS 1 TO 6
- EXHIBIT P8 TRUE COPY OF REPRESENTATION DATED 01.10.2019 SUBMITTED BY THE 2ND PETITIONER BEFORE THE OFFICIAL RESPONDENTS 2 TO 6
- EXHIBIT P9 TRUE COPY OF PETITION DATED 04.10.2019 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 6TH RESPONDENT

EXHIBIT P10 TRUE COPY OF F..R.IN CRIME NO.906 OF  
2018 OF PUTHENCruz POLICE STATION

EXHIBIT P11 TRUE COPY OF F.I.R.IN CRIME NO.914/2019  
OF PUTHENCruz POLICE STATION

EXHIBIT P12 TRUE COPY OF JUDGMENT IN W.P(c)NO.10727  
OF 2019 DATED 20.9.2019 OF THIS HON'BLE  
COURT

EXT.P13 TRUE COPY OF THE PHOTOGRAPHS SHOWING HE  
PRESENT NATURE.

EXT.P14 TRUE COPY OF LETTER DATED 18.8.2020  
ISSUED BY THE 1ST PETITIONER TO THE 6TH  
RESPONDENT.

EXT.P15 TRUE COPY OF ASSESSMENT EXTRACT OF THE  
BUILDING BEARING DOOR NO.494/10 OF  
POOTHrukKA PANCHAYAT

EXT.P16 TRUE COPY OF THANDAPER ACCOUNT OF THE  
1ST PETITIONER CHURCH

EXT.P17 TRUE COPY OF PHOTOGRAPH SHOWING THE  
CONSTRUCTION OF PATHWAY THROUGH THE  
PROPERTY OF THE CHURCH.

EXT.P18 TRUE COPY OF PHTOTOGRAPH OF THE PARISH  
HALL BUILDING SHOWING THE POSTER.

**RESPONDENTS EXHIBITS**

EXT R7 (A) PHOTOSTAT COPY OF RELEVANT  
PAGE OF OS 4/1979 ON THE  
FILES OF THIS COURT SHOWING  
SERIAL NO.681

EXT. R7 (B) PHOTOSTAT COPY OF IA  
NO.780037/19 IN COC 1022/2019

EXT.R7 (C) PHOTOSTAT COPY OF THE SUPREME  
COURT (DECREE AND ORDERS)  
ENFORCEMENT ORDER, 1954.

EXT.R7 (D) TRUE PHOTOSTAT COPY OF THE  
SALE DEED NO.331 OF 1106 (ME)

EXT.R7 (E) TRUE PHOTOSTAT COPY OF THE  
NOTORIZED TRANSLATION OF  
EXT.R7 (D)

ANNEXURE A COPY OF THE ORDER DATED  
3.11.2021 IN IA 1/2021 IN  
UNNUMBERED WA (FILING)  
NO.21792 OF 2021

EXT.R14 (A) TRUE COPY OF GIFT DEED  
NO.1490 OF 1954

TRUE COPY

PS TO JUDGE