

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR
&
THE HONOURABLE MRS. JUSTICE C.S. SUDHA

Wednesday, the 3rd day of November 2021 / 12th Karthika, 1943
IA.NO.1/2021 IN UNNUMBERED WA OF 2021 (FILING NO. 21792 OF 2021)

AGAINST ORDER DATED 05.10.2021 IN WP(C) 27219/2019 OF THIS COURT.

APPELLANT/ADDL.RESPONDENT TO BE IMPLEADED AS R13:

MANU KURIAN THURUTHEL, AGED 49 YEARS,
S/O.LATE KURIAN THURUTHEL, INDIAN INHABITANT,
RESIDING AT THURUTHEL, 149, PLOT NO.998,
6TH AVENUE, ANNA NAGAR, CHENNAI, PIN-600 040.

RESPONDENTS/PETITIONERS & RESPONDENTS:

1. ST. MARY'S ORTHODOX SYRIAN CHURCH, POOTHRIKKA KARA,
AIKARANADU SOUTH VILLAGE, KUNNATHUNADU TALUK,
PIN-682 308, REPRESENTED BY ITS VICAR.
- 2, FR.ABY ULAHANNAN, S/O.ULAHANNAN, PARACHALIL HOUSE,
THATTAKUZHA P.O., THODUPUZHA VICAR,
ST.MARY'S SYRIAN ORTHODOX CHURCH, ★
POOTHRIKKA KARA-682 308.
3. JOSSY P.JACOB, AGED 48 YEARS, S/O.K.J.CHACKO,
CHETTIKUZHIYIL HOUSE, (KAVANAMOLAYIL),
POOTHRIKKA KARA, AIKKARANADU SOUTH VILLAGE,
KUNNATHUNADU TALUK-682308.
4. JOHN P.KURIAKOSE, AGED 64 YEARS, THOZHUTHUNKAL HOUSE,
POOTHRIKKA KARA, AIKKARANADU SOUTH VILLAGE,
KUNNATHUNADU TALUK-682308.
5. THE STATE OF KERALA, REPRESENTED BY ITS CHEIF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
6. THE DISTRICT COLLECTOR, ERNAKULAM,
CIVIL STATION, KAKKANADU-682030.

P.T.O.

7. THE STATE POLICE CHIEF, POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM-695 001.
8. THE DISTRICT POLICE CHIEF, ERNAKULAM RURAL
OFFICE OF THE DISTRICT POLICE CHIEF, ALUVA-683 101.
9. THE DEPUTY SUPERINTENDENT OF POLICE,
DYSF OFFICE, MUVATTUPUZHA-686 661.
10. THE STATION HOUSE OFFICER, PUTHENCROZ POLICE STATION,
PUTHENCROZ-682308.
11. P. M. POULOSE, S/O. MARKOSE, PULICHOTTIL HOUSE,
POOTHRIKKA, AIKKARANADU SOUTH VILALGE,
KUNNATHUNADU TALUK-686 662.
12. BIJU M. . PAUL, S/O. POULOSE, MULLAKKAL HOUSE,
POOTHRIKKA P.O. -682 308.
13. JOHNY VARGHESE, S/O. VARGHESE, MANDENKUZHIYIL HOUSE,
POOTHRIKKA P.O. -682 308.
14. PHILIP, S/O. KURIAKOSE, THOZHUTHUNKAL HOUSE,
POOTHRIKKA P.O. -682 308.
15. BENNY, S/O. KURIAN, KUPPLASSERI HOUSE,
POOTHRIKKA P.O. -682 308.
16. FR. BINU YOHANNAN, CHUNDAKKATTUMALAYIL HOUSE,
KUNNAKKAL, ERNAKULAM DT. P.O. -682 308.

Application praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to grant leave to the appellant to file the above Writ Appeal before this Hon'ble Court against the order dated 05.10.2021 in W.P.(C)No.27219 of 2019 of a learned Single Judge of this Hon'ble Court.

This Application coming on for orders upon perusing the application and the affidavit filed in support thereof, and upon hearing the arguments of M/S. MATHEWS J. NEDUMPARA, MARIA NEDUMPARA & ABDUL JABBARUDEEN M., Advocates for the petitioner, the court passed the following:

P.T.O.

P.B.SURESH KUMAR & C.S.SUDHA, JJ.

Writ Appeal (Unnumbered) of 2021
(Filing No.21792 of 2021)

Dated this the 3rd day of November, 2021

ORDER

P.B.Suresh Kumar, J.

I.A. No. 1 of 2021

The above interlocutory application is one preferred seeking leave to file an appeal against the interim order dated 05.10.2021 passed by the learned Single Judge in W.P.(C) No.27219 of 2019. The petitioner, though not a party to the writ petition, is aggrieved by the said order and hence, this application for leave.

2. Heard the learned counsel for the petitioner.
3. The impugned order is a common interim order passed by the learned Single Judge in a batch of writ petitions

seeking police aid in respect of a few Parish Churches under the Malankara Orthodox Syrian Church (the Church). The dispute in the said cases is essentially a dispute between two factions of the Church, the Orthodox faction and the Patriarch faction.

4. The learned counsel for the petitioner submitted that the learned Judge who passed the impugned interim order ought to have recused himself from dealing with the writ petitions, as he is disqualified from doing so. Referring to the facts in W.P.(C) No.27219 of 2019 and the prayers sought therein, the learned counsel also submitted that the said writ petition is one to be dismissed *in limine* and the impugned interim order is, therefore, unsustainable in law. The learned counsel elaborated the said submission pointing out that even if the Orthodox faction of the Church who have instituted the writ petition have any right against the Patriarch faction, the same can be enforced only through a properly instituted suit and a writ petition cannot be filed for the same.

5. It is seen that in terms of the interim order impugned in the writ appeal, the learned Judge has only directed the Superintendents of Police and the officers under their command to ensure that the areas where the Parish Churches are situated are protected from any violation of law and order by any person and that no attempt to breach peace or commit violence is tolerated or permitted from any person on either side of the divide and that the properties and assets of the churches are protected. On a query from the Court as to how the petitioner is aggrieved by such a direction, the learned counsel pointed out that the various observations made by the learned Single Judge for the purpose of justifying the aforesaid interim order are against the interest of the petitioner and he is, therefore, constrained to prefer appeal against the said interim order.

6. As noted, the petitioner is not a party to the writ petition from which the appeal arises. Insofar as the writ

petition is still pending, we do not find any reason to entertain the appeal preferred against the interim order passed in the writ petition, especially since the petitioner is not in any manner affected by the said interim order, and the petitioner is entitled to canvass the correctness of the alleged adverse observations made by the learned Single Judge in the impugned order by impleading himself in the writ petition.

7. As regards the argument that the learned Single Judge ought to have recused himself from deciding the writ petition, we are of the view that recusal is a matter for the Judge concerned to decide, for in the context of an appellate court deciding the correctness of an order, it does not matter as to who decided it [See **Indore Development Authority v. Manohar Lal and others**, (2020) 6 SCC 304 and **Supreme Court Advocates-on-Record Assn. v. Union of India**, (2016) 5 SCC 808].

In the said view of the matter, we decline the leave

Writ Appeal (Unnumbered) of 2021

(Filing No.21792 of 2021)

5

sought for by the petitioner. It is, however, made clear that this order will not preclude the petitioner from seeking impleadment in the writ petition and seeking orders vacating or modifying the impugned interim order.

Sd/-

P.B.SURESH KUMAR, JUDGE.



Sd/-

C.S.SUDHA, JUDGE.

YKB