

P.B.SURESH KUMAR, J.

Cont.Case (C) No.2615 of 2019

Dated this the 8th day of December, 2020.

ORDER

This proceedings under the Contempt of Courts Act is instituted alleging wilful disobedience of the directions issued by this Court in W.P.(C) No. 25089 of 2019.

2. W.P.(C) No. 25089 of 2019 was a writ petition relating to Marthoman Cheriyaipalli, Kothamangalam (the church), a constituent parish church of the Malankara Orthodox Syrian Church. There is a dispute in the Church between two factions of the parishioners namely Patriarch faction and Orthodox faction. The petitioner is the Vicar of the Church appointed by the Orthodox faction. He instituted O.S.No.162 of 2018 before the Munsiff's Court, Muvattupuzha seeking a decree of permanent prohibitory injunction restraining the defendants therein, in a representative capacity, from preventing him from performing religious services in the church and also restraining the priests

alleging that being the Vicar of the church appointed in terms of 1934 Constitution of the Malankara Orthodox Syrian Church, he is entitled to function as the Vicar of the church governed by the said Constitution and that the parishioners belonging to Patriarch faction are not permitting him to enter the Church. In the suit, the petitioner preferred I.A.No.830 of 2018 for an order of temporary injunction in tune with the reliefs claimed in the suit and the said application was allowed by the court as prayed for. The defendants in the suit did not obey the said order of injunction. The petitioner then preferred I.A.No.2738 of 2018 seeking directions to the police to enforce the order of injunction. The court allowed the said application directing the Deputy Superintendent of Police, Muvattupuzha to provide police assistance to the petitioner to ensure compliance of the order of injunction. The said order was challenged by the defendants in the suit before this court in a proceedings under Article 227 of the Constitution and this court affirmed the order granting police protection to the petitioner. Even

thereafter, the petitioner was not permitted to enter the church and the police did not render any assistance to him as directed by the court. The writ petition was filed in the circumstances, seeking appropriate relief against the State for giving effect to the order of the court.

3. The stand taken by the State in the writ petition was that the parishioners belonging to Patriarch faction are not permitting implementation of the order of the court by resorting to acts of violence and they need to be convinced by persuasion to accept the reality of failure in the litigation, and that forceful implementation of the order cannot be attempted in the premises of a Church. This court repelled the said contentions and having regard to the contentions aforesaid, disposed of the writ petition on 03.12.2019 with the following directions:

(i) The first respondent shall ensure public order, peace and tranquility in the locality of the Church forthwith, if necessary, by deploying the provisions of Chapter X of the Code of Criminal Procedure.

(ii) The first respondent shall, thereafter, take over the Church, its precincts and all its movables after removing all persons squatting inside the Church premises and its compound and shall make arrangements as he considers proper for looking after the Church, its precincts and movables.

(iii) When the first respondent is satisfied thereafter that the situation prevailing in the area is conducive so as to enable the petitioner, who is the Vicar of the Church, to conduct religious ceremonies in the Church, the Church, its precincts and movables shall be handed over to the petitioner for management.

(iv) In the meanwhile, if the body of any parishioner is to be buried, there shall be no impediment for the same and the religious services required for the same shall be rendered by the petitioner.

(v) Once the Church and its precincts are handed over to the petitioner, he shall be extended necessary police aid for conducting religious ceremonies in the Church.

(vi) If any person creates any law and order situation or obstructs the religious services in the Church, the Police shall forthwith arrest and remove him.

(vii) Necessary contingent of Police shall remain in the premises of the Church until peace and harmony is attained

and the petitioner would be in a position to manage the affairs of the Church.

4. Notice was issued in the Contempt proceedings to the respondent, the District Collector, Ernakulam on 13.12.2019 directing him to appear on 09.01.2020. On 09.01.2020, the respondent preferred an application as I.A. No.1 of 2020, supported by an affidavit, stating, among others, that as the lion's share of the parishioners of the church belong to Patriarch faction and as they are collectively opposing the implementation of the order of the court, implementation of the order of the court is likely to trigger law and order situation in the area; that a large contingent of police is therefore required for giving effect to the order of this court; that the District Police Chief informed that the required police force cannot be spared due to the pilgrimage season of Sabarimala temple going on then; that the Revenue Divisional Officer concerned, whom the

respondent intends to appoint as receiver in terms of the directions, is on duty at Sabarimala and that the District Administration would implement the order of the court, after chalking out a scheme for the same. In the light of the said affidavit and having regard to the fact that the respondent being the District Collector has multifarious functions to be discharged, his personal appearance was dispensed with for the time being.

5. After about a month, when the matter came up on 14.02.2020, it was submitted on behalf of the petitioner that the directions in the judgment are yet to be complied with. In the light of the said submission, after hearing the State Attorney who appeared for the respondent, this Court directed the respondent to be present in court on 25.02.2020 and explain why the directions have not been given effect to. On 25.02.2020, placing reliance on the affidavit filed by the respondent in the matter on 09.01.2020, the learned Senior Counsel for the petitioner contended that even after the lapse

of almost two months, serious efforts are not taken by the respondent to give effect to the directions; that the affidavit filed by the respondent is vague and sketchy in as much as it does not indicate the time limit within which the directions would be given effect to; that the tone and tenor of the affidavit is to the effect that the directions issued cannot be given effect to since majority of the parishioners are against the implementation of the directions and that therefore, this Court has to adopt appropriate other measures for implementing the directions of the court by invoking the jurisdiction under Article 215 of the Constitution. The respondent who appeared in person on that day pointed out that sufficient safeguards are to be taken to avoid law and order issues while implementing the directions; that he had several rounds of discussions with the Police Chief for chalking out a plan for implementation of the directions and the directions issued by this Court would be implemented within a reasonable time. After hearing the respondent, the matter

was reserved for orders.

6. While so, the respondent has filed a report on 02.03.2020 in the proceedings, stating that steps for implementing the directions of the court will be completed in few days and prayed for a months time for implementation of the order. In the light of the said report, though the matter was listed for orders on 05.03.2020, orders were not pronounced on that day. The case was not listed thereafter due to the Covid-19 pandemic and the summer recess of the Court. After the summer recess, at the instance of the petitioner, though the matter was listed on 29.06.2020, it was adjourned to 08.07.2020 and then to 10.08.2020 and thereafter to 14.08.2020 by the Court suo motu as it was felt that having regard to the spread of Covid-19 pandemic in the State, implementation of an order in the nature of one issued by this Court needs to be deferred.

7. On 14.08.2020, when the matter was taken up, it was again submitted on behalf of the petitioner that the

directions are yet to be complied with. It was asserted by the learned Senior Counsel for the petitioner on that day that the inaction on the part of the respondent to comply with the directions issued by this Court is deliberate, and prayed for directions to the Central Reserve Police Force to give effect to the directions. This Court then listed the matter on 18.08.2020 with the direction to the Registry to show the name of the Assistant Solicitor General of India in the cause list, with a view to explore the alternative options for implementation of the order of the Court.

8. On 18.08.2020, the learned Assistant Solicitor General of India who was present in Court submitted that if the Court directs, Deputy Inspector General of Police(DIGP), Group Centre, Central Reserve Police Force(CRPF), Pallipuram would extend aid to the Court for implementing the order. The State Attorney, who was representing the respondent then pointed out that the ward in which the church is located was declared as a containment zone and it is on account of the

said reason that the order could not be given effect to. In the light of the said submission, the matter was adjourned to 24.08.2020 with an oral direction to the respondent to file a statement regarding the submission made on his behalf.

9. On 22.08.2020, the respondent has filed a report stating that Ward No.17 of Kothamangalam Municipality within the limits of which the church is located was declared then as a containment zone due to the spread of Covid-19 pandemic. In the light of the said report, orders on the contempt petition were deferred.

10. During first week of October 2020, the learned Senior Counsel for the petitioner mentioned in Court for a posting of the matter, pointing out that the directions are yet to be implemented and that the area is no longer a containment zone. Accordingly, the matter was directed to be listed on 10.11.2020. Even on 10.11.2020, It was asserted by the learned Senior Counsel for the petitioner that the inaction on the part of the respondent to comply with the directions is

deliberate and prayed for directions to the Central Reserve Police Force to give effect to the directions. In the course of the hearing, when the State Attorney was required to submit as to when the directions issued in the matter would be given effect to by the State, the State Attorney was not in a position to make any commitment as to the time limit within which the directions would be given effect to. The matter, in the circumstances, was reserved for orders again.

11. Immediately thereupon, the Registry informed that two affidavits have been filed in the matter on 13.11.2020, one by the respondent and the other by the Additional Chief Secretary of the State seeking orders adjourning the matter further. As it was felt that it would be inappropriate to pass orders in the matter without considering the said affidavits, the matter was directed to be listed again on 25.11.2020.

12. In the affidavit filed by the Additional Chief Secretary of the State on 12.11.2020, it is stated, among

others, that the Chief Minister of the State has convened a meeting of the religious heads of the Orthodox and Jacobite factions to find an amicable solution of the disputes between them; that three sessions of the said meeting are over; that there is an understanding that both parties will not insist implementation of any order until a final decision is taken in the proposed further meetings and therefore, the further proceedings in the case needs to be adjourned for three months. The minutes of the meetings held have been produced along with the affidavit as Annexure-A, Annexure - B and Annexure – C respectively. Paragraphs 10 to 12 of the said affidavit reads thus;

"10. The Minutes are self explanatory. There is a clear understanding that until the final decision is taken in the proposed further meetings, both parties will not precipitate any further issues and will not insist for implementation of the order by taking over the Church from one faction by use of force or with the assistance of the Court Order or voluntarily and the present situation will continue until the further meetings are held and amicable resolution for the dispute is reached.

11. It is for and on behalf of the State, I am bringing the above facts before this Hon'ble Court. If this Hon'ble Court passes any order during the pendency of the amicable settlement attempted at the instance of Hon'ble Chief Minister that will disrupt the so far successful attempt to a peaceful solution for the long standing dispute and peaceful implementation of the judgment of the Hon'ble Supreme Court. The Minutes of the Meetings may be accepted and all proceedings may be adjourned for a period of three months for the time being within which it is expected that there will be a peaceful and amicable solution to the dispute between both factions. Incidentally, it is submitted that the dispute between two factions within the Church affects even the family relations among the Malankara Church factions. There are several instances of marriages between Jacobite and Orthodox faction members. Indirectly the dispute among Jacobite and Orthodox factions affects the peace and tranquillity in the State of Kerala.

12. In the above said circumstances, this Hon'ble Court may be pleased to adjourn all proceedings and disputes for a period of three months to reach an amicable solution in the discussions and settlements which are already arrived as stated in Annexure A to Annexure C Minutes of the Meetings.

Recording the above facts, all proceedings may be adjourned for a period of three months."

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That apart, it is stated in the affidavit of the respondent that if there is no settlement in the meetings convened by the Chief Minister, the directions would be implemented, if sufficient time is given. On receiving copies of the affidavits aforesaid, the petitioner filed an interlocutory application seeking orders to initiate proceedings against the Additional Chief Secretary under Section 195(1)(a)(i) of the Code of Criminal Procedure for the offence of perjury stating that there was no settlement between the parties as stated by him in the affidavit and that the affidavit to that effect is false.

13. Coming to the affidavit filed by the respondent, it is necessary to mention at the outset that the stand taken by the respondent based on the intelligence report was in essence the stand of the State in the writ petition and it was rejecting the same that the directions sought to be enforced in the proceedings have been issued.

Further, It is surprising to note that the respondent, who earlier committed in his report dated 02.03.2020 that the directions issued by this court would be implemented within a month, has backed out from the said commitment and made an evasive statement that he would implement the directions, if sufficient time is given and if there is no settlement in the meanwhile. In other words, the stand of the respondent is that he would implement the directions only if he is given the discretion regarding the time limit for implementing the order.

14. Be that as it may. I have perused meticulously the minutes of the meetings convened by the Chief Minister produced along with the affidavit filed by the Additional Chief Secretary and I do not find any discussion in the said meetings concerning the implementation of the order passed by this Court nor do I find in the minutes any understanding as stated by the Additional Chief Secretary in the affidavit. As there was no statement in the affidavit filed by the Additional Chief Secretary as to whether the directions issued by this court

would be given effect to and if so, the time limit within which the same would be done, in the course of the arguments on 25.11.2020, the State Attorney was required to clarify that aspect and as usual, the answer was evasive. As noted, the directions in the writ petition were against the District Administration, and there was no reason for the State to intervene and seek an adjournment of the contempt proceedings initiated against the District Administration. The aforesaid conduct of the State Government in intervening in this proceedings would indicate beyond doubt that the inaction on the part of the respondent in not giving effect to the directions issued by the court is at the instance of the State Government. As noted, even when the State chose to interdict the respondent from implementing the directions issued by this court and to intervene in the proceedings, it is not giving any commitment before this Court as to whether the directions issued by the Court would be implemented and if so, within what time.

15. As noted, it is a case where the petitioner in the writ petition has obtained an order from a court of competent jurisdiction as early as on 21.07.2018 and till date the said order has not been given effect to, despite the directions issued by this court for the implementation of the same. A judgment or a direction of a court is of no use if it is not enforceable. The judiciary has no machinery of its own to enforce its judgments and directions. Who then has to implement the directions of the court? This question has been answered by Lord Denning in his book, 'The Closing Chapter' in the following words:

"From this, I gather the sword was the symbol of the authority by which justice is done. No judgment of any court, no order of any judge, is of any use unless it can be enforced : and to be enforced it must needs have the authority of the state behind it. The sword of justice is the sword of state. It is the symbol of authority which must be upheld."

In a country, the Constitution of which is built on the principle of rule of law, if the State does not implement the directions of

the court, that will be the end of the rule of law and there would be a constitutional stalemate. It is on account of this reason that it has been held by the courts time and again that the Constitution fastens on all authorities a non-negotiable obligation to enforce orders of the court and the authorities who are bound to comply with the orders have no discretion whether or not to abide by the decision of the court, whatever be the reasons for the same. The said principle has been reiterated by the Apex Court in **The Commissioner, Karnataka Housing Board v. C. Muddalah**, AIR 2007 SC 3100. Paragraph 31 of the said judgment reads thus:

31. We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of

justice. The argument of the Board, therefore, has no force and must be rejected.

The High Court is the highest court in the State. The Constitution confers on the High Court vast powers to ensure that the constitutional guarantee of justice to all is truly fulfilled. The protection of the rights and liberties of individuals guaranteed under the Constitution depends on the efficient functioning of the judiciary and respectful and faithful obedience of its commands by the executive.

16. True, there would be exceptional situations where the executive government will have genuine difficulties in implementing the orders of the Court even when it desires to implement the orders of the court. In such situations, it is always open to the executive government to approach the Court which passed the order or to the higher Court for appropriate modifications of the order, and I do not think the courts in India have ever failed in understanding the genuine difficulties in implementing the orders of the Court. As noted,

the reasons put forward for not giving effect to the directions issued by this court are that a mediation talk has been initiated at the instance of the Chief Minister of the State and that the defeated parties to the litigation namely the Patriarch faction have made all arrangements to obstruct the implementation of the directions. True, the materials on record indicate that the Chief Minister has initiated a mediation process for an amicable settlement of the disputes between two factions of the church, and that process is going on. As noted, the minutes of the meetings do not reveal that there was any understanding between the parties that orders of the courts need not be implemented pending the mediation talks. There is absolutely no difficulty in understanding the earnest efforts taken by the State in arriving at an amicable solution to the disputes between the two factions of the Church. But, such proceedings cannot automatically operate as an impediment in continuing the pending judicial proceedings, unless the parties to the proceedings agree for such a course. As far as

the present case is concerned, the petitioner asserts that there was no understanding between the parties to the mediation talks to keep in abeyance the proceedings pending before various courts. When the petitioner asserts so and when the State is unable to show anything to indicate that there has been an understanding to the contrary, this Court is helpless and it is bound to enforce its orders. Coming to the other reason, if what is reported by the Police Intelligence is correct, the action proposed by the members of the Patriarch faction would be *per se* criminal contempt, and if the executive government is not in a position to tackle such situations, it would pose a serious challenge to the existence of judiciary and the rule of law. If the stand taken is accepted as sufficient cause for not implementing the directions issued by this court, it will give a wrong message to the society and the same will ruin the confidence, the general public repose in the system. It is all the more so since large number of litigants approach this Court for relief and a single instance of insolent

defiance of an order of the Court is sufficient to shake the confidence reposed by the public in the judicial institutions. As held in the judgment rendered in the writ petition itself, the State cannot be given the discretion whether or not to implement the orders of the court and also as to the time within which the orders could be implemented, for such a discretion would go against the concept of supremacy of the rule of law. This court is not unaware of the practical difficulties that may be experienced by the State machinery in implementing orders of the instant nature. But, practical difficulties have to give way for the implementation of the orders for upholding the majesty of the law. The conduct of the respondent in not implementing the directions issued by this Court, in the facts and circumstances of the case, can be viewed only as wilful. Having regard to the peculiar facts, there is absolutely no assurance that the directions issued by this court would be given effect to by the respondent, if further time is granted. Needless to say, this Court has to

work out alternatives for giving effect to the orders of the court to uphold the dignity of the court and to maintain the rule of law invoking the inherent powers of this court under article 215 of the Constitution. I am fortified in the said stand by the doctrine of necessity also to sustain the course of justice. I am also fortified in the said view by the decision of the Calcutta High Court in **Derby Sales Pvt. Ltd. v. Sanjay Mitra**, 2017 SCC OnLine Cal 54, the relevant portion of which reads thus:

"Thus, the law appears to be well-settled. The court has sufficient power to pass an order on a contempt application for closing the breach. The court cannot and should not rest by passing a punitive order against the contemnor. It is the duty of the Court to see that its order is implemented and the contemnor does not enjoy the benefits he has derived by violating the court's order. If this is not done, the entire process of law and justice shall become a farce".

17. In the aforesaid facts and circumstances, without prejudice to the further proceedings contemplated against the respondent under the Contempt of Courts Act, I deem it appropriate to direct that if the directions issued by

this Court are not complied with on or before 8.1.2021, the DIGP, Group Centre, CRPF, Pallipuram shall take over the Church, its precincts and all its movables after removing all persons squatting inside the Church premises and its compound and hold the same under his control, until further orders. Ordered accordingly. The Assistant Solicitor General of India shall communicate this order to the DIGP, Group Centre, CRPF, Pallipuram for compliance.

P.B.SURESH KUMAR, JUDGE

ds 29.02.2020

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ASSISTANT REGISTRAR