

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 03RD DAY OF DECEMBER 2019 / 12TH AGRAHAYANA, 1941

WP(C).No.25089 OF 2019(I)

PETITIONER/S:

FR.THOMAS PAUL RAMBAN,
AGED 46 YEARS
S/O. LATE PAULOSE, MARACHERIL HOUSE, KUTHUKUZHI
KARA, KOTHAMANGALAM VILLAGE, KOTHAMANGALAM TALUK,
PIN-686691.

BY ADVS.
SRI.S.SREEKUMAR (SR.)
SRI.ROSHEN.D.ALEXANDER
SMT.TINA ALEX THOMAS

RESPONDENTS:

- 1 THE DISTRICT COLLECTOR,
KAKKANAD, ERNAKULAM-682030.
- 2 REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA-686669.
- 3 DEPUTY SUPERINTENDENT OF POLICE,
MUVATTUPUZHA-686669.
- 4 INSPECTOR OF POLICE,
KOTHAMANGALAM POLICE STATION, KOTHAMANGALAM -
686691.
- 5 ADDL. R5. FR. BIJU VARKEY,
AGED ABOUT 42 YEARS, S/O.VARKEY, KORATTIYIL HOUSE,
MUDAVOOR KARA, VELLOORKUNNAM VILLAGE, MUVATTUPUZHA
TALUK, PIN-686673.
- 6 ADDL. R6. FR. MONCY N ABRAHAM,
AGED ABOUT 54 YEARS, S/O.ABRAHAM,
NIRAVATHUKANDATHIL HOUSE, NELLIMATTOM KARA,
KUTTAMANGALAM VILLAGE, KOTHAMANGALAM TALUK, PIN-
686693.

- 7 ADDL. R7. FR. GEEVARGHESE M.T.,
AGED ABOUT 54 YEARS, S/O.THOMAS, MANNARAMBIL HOUSE,
AAZHAKOM KARA, MUKKANNOOR VILLAGE, ALUVA TALUK,
PIN-683577.
- 8 ADDL. R8.FR. BASIL K. PHILIP,
AGED ABOUT 39 YEARS, S/O.PHILIP, KOTTICKAL HOUSE,
PADIKKAPPU KARA, MANNAMKANDAM VILLAGE, DEVIKULAM
TALUK, PIN-685561.
- 9 ADDL. R9. FR. BIBIN C.U.,
AGED ABOUT 37 YEARS, S/O.ULAHANNAN, CHERUKUNNEL
HOUSE, THEKKENMARADY KARA, MARADY VILLAGE,
MUVATTUPUZHA TALUK, PIN-686673.
- 10 ADDL. R10. SALIM CHERIAN,
AGED ABOUT 62 YEARS, S/O.CHERIAN, MALIYIL HOUSE,
ILAVANADU KARA, KOTHAMANGALAM-686691.
- 11 ADDL. R11. JOHNSON KURIAKOSE,
AGED 52 YEARS, S/O.KURIAKOSE, THEKKILAKKATTU HOUSE,
KOZHIPPILLY KARA, VARAPETTY, KOTHAMANGALAM-686691.

(ADDL.R5 TO R11 ARE IMPEDED AS PER ORDER DATED
03.12.2019 IN IA.3/2019.)

- 12 ADDL.R12.MANOLIN KUNJACHAN,
AGED 40 YEARS, S/O.KUNJACHAN, THACHAMATTAM
MANGALATH HOUSE, ANGADI, KOTHAMANGALAM, PIN-686691.

(ADDL.R12 IS IMPEADED AS PER ORDER DATED
03.12.2019 IN I.A.4/2019.)

R1-4 BY SRI.K.V.SOHAN, STATE ATTORNEY
R5, R9 BY ADV. SRI.S.VINOD BHAT
R5, R9 BY ADV. KUM.ANAGHA LAKSHMY RAMAN
R6-7 BY ADV. SRI.PEEYUS A.KOTTAM
R6-7 BY ADV. SMT.JUBIN C.VADAKKAN
R6-7 BY ADV. SHRI.JOMON J. MALIEKAL
R6-7 BY ADV. SHRI. HRITHWIK D. NAMBOOTHIRI
R12 BY ADV. BABU KARUKAPADATH
R12 BY ADV. SMT.M.A.VAHEEDA BABU
R12 BY ADV. SRI.SABU THOZHUPPADAN
R12 BY ADV. SRI.P.U.VINOD KUMAR
R12 BY ADV. SRI.AVINASH P RAVEENDRAN

WPC 25089 of 2019

3

R12 BY ADV. SMT.ARYA RAGHUNATH

R12 BY ADV. SMT.KADIJA JASMINE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03.12.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

W.P.(C) No.25089 of 2019

Dated 3rd December, 2019.

J U D G M E N T

Marthoman Cheriyaipalli, Kothamangalam (the Church) is 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. According to the Patriarch faction, the Church has to be administered in accordance with the Constitution of the Jacobite Syrian Church Sabha and according to the Orthodox faction, the Church has to be administered in accordance with the 1934 Constitution of the Malankara Orthodox Syrian Church. The petitioner is the Vicar of the Church appointed in terms of 1934 Constitution of the Malankara Orthodox Syrian Church and the parishioners belonging to Patriarch faction, on account of the factional dispute, did not permit him to enter the Church for performing religious ceremonies. The petitioner, therefore, 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 the petitioner from performing religious ceremonies in the

church and also restraining a few priests belonging to Patriarch faction from entering 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 sought in the suit and in terms of Ext.P1 order, the court restrained defendants 2 to 9 and their men and agents from causing any obstruction to the petitioner in the matter of discharging his duties and functions as the Vicar of the Church. The court also restrained defendants 1 to 5 therein, in terms of the said order, from acting as vicars/assistant vicars of the Church till the disposal of the suit. Ext.P1 order has become final. The suit is still pending.

2. It is stated by the petitioner that since the defendants in the suit did not obey Ext.P1 order of injunction, the petitioner filed I.A.No.2738 of 2018 seeking appropriate directions to the police for enforcing Ext.P1 order of injunction. In terms of Ext.P2 order, the trial court allowed I.A.No.2738 of 2018 and directed the Deputy Superintendent of Police, Muvattupuzha to provide police assistance to the petitioner for preventing violation of Ext.P1 order of injunction. Ext.P2 order was challenged by the defendants in the suit, in O.P.(C) No.3147 of 2018 before this court and in terms of Ext.P3 order, this court affirmed Ext.P2 order.

3. It is stated by the petitioner that although he sought police assistance from the Deputy Superintendent of Police, Kothamangalam on the strength of Exts.P2 and P3 orders after

communicating the same to him, for the purpose of conducting religious services in the Church on 20.12.2018, the police did not give any assistance and as a result, the parishioners belonging to Patriarch faction formed themselves into an unlawful assembly in the premises of the Church and prevented the petitioner from entering the Church. It is also stated by the petitioner that at the same time, despite Exts.P2 and P3 orders, the Police permitted the priests belonging to Patriarch faction to conduct religious ceremonies in the Church on that day. It is also stated by the petitioner that he was waiting for Police aid all throughout the day, and till about 2.45 p.m. on the succeeding day, and he was removed by the Police from the premises of the Church on the strength of Ext.P4 order issued by the District Magistrate. In Ext.P4 order, it is recited that though the Police made arrangements for rendering protection to the petitioner, the protection could not be rendered as large number of parishioners belonging to Patriarch faction assembled at the premises of the Church and obstructed the petitioner from entering inside the Church. It is also recited in the said order that the petitioner who was resisting the obstruction was required to be removed from the scene as his health condition was found deteriorating. It is stated that as the police machinery of the State failed to implement the orders issued by the courts, the petitioner preferred Ext.P16 representation to the District Collector and others requesting them to take effective and adequate

steps to remove the obstructions so as to enable the petitioner and his assistants to conduct religious services in the Church and also to facilitate a peaceful atmosphere for the Parishioners to attend religious services. The writ petition is filed, thereupon, alleging that the request made by the petitioner in Ext.P16 representation is not being considered, and seeking the following reliefs :

- “(i) To issue a writ, order or direction in the nature of mandamus directing respondents 1 and 2 to invoke powers vested on them under Chapters VIII and X of the Code of Criminal Procedure in order to maintain public order and tranquility in Marthoman Cheriya Pally, Kothamangalam.
- (ii) To issue a writ, order or direction in the nature of mandamus directing respondents 1 to 4 to act in aid of the Hon'ble Supreme Court as they are bound to do as per Article 144 of the Constitution of India thereby giving effect to the judgment of the Hon'ble Supreme Court in K.S.Varghese case [2017(3) KLT 261] as clarified by Ext.P8 order in Marthoman Cheriya Pally, Kothamangalam.
- (iii) To issue a writ, order or direction in the nature of mandamus directing respondents 3 and 4 to invoke the provisions of the Kerala Police Act, 2011 especially Sections 63 and 67 in order to ensure prevention of any untoward incident in Marthoman Cheriya Pally, Kothamangalam.
- (iv) To issue such other appropriate writ order or direction that may be deemed to be just and equitable in the facts and circumstances of the case.”

4. A statement has been filed in the matter by the fourth respondent, the concerned Inspector of Police. Among others, it is stated in the statement that when the fourth respondent went to the

Church on receipt of the representation of the petitioner on 20.12.2018, there were about 300 parishioners inside the Church and that they came out of the Church on seeing the petitioner in the premises of the Church and encircled the car in which the petitioner reached the place and attacked him. It is also stated in the statement that the police removed the violent parishioners, and two crimes have been registered in connection with the incident, one against about 100 identifiable persons under Sections 143, 145, 148 and 332 read with Section 149 of the Indian Penal Code and another against seven named persons and 30 identifiable persons under Sections 143, 148, 323, 324, 326, 307, 294(b), 506(2) and 427 read with Section 149 of the Indian Penal Code, for attacking the petitioner. It is also stated by the fourth respondent in the statement that for the smooth implementation of the orders of the court, the obstructors need to be convinced by persuasion to accept the reality of failure in the litigation, and forceful implementation of the orders of the court such as use of tear gas, firing etc. cannot be attempted in the premises of a holy place like the Church in the instance case.

5. Heard the learned Senior Counsel for the petitioner, the learned State Attorney, as also the learned counsel for the party respondents.

6. The party respondents except the additional 12th respondent have though made elaborate arguments, according to me,

it is unnecessary to refer to those arguments, as their arguments, in essence, was as to the correctness of Exts.P1 to P3 orders, which have become final.

7. The stand taken by the additional 12th respondent, however, is that the petitioner does not possess the basic and fundamental qualifications required to be appointed as the vicar of the Church in terms of the 1934 Constitution of the Malankara Orthodox Syrian Church. In the light of Exts.P1 to P3 orders, I do not think that this is the forum for the additional 12th respondent to raise such an issue.

8. As noted, after having found that the defendants in the suit have flouted Ext.P1 order of temporary injunction, in terms of Ext.P2 order, the Munsiff's Court, Muvattupuzha directed the Deputy Superintendent of Police, Muvattupuzha to provide police assistance to the petitioner for preventing violation of Ext.P1 order of injunction. The said order proceeds on the premise that Ext.P1 order cannot otherwise be implemented in the peculiar facts of the case. Ext.P2 order has been affirmed by this Court in terms of Ext.P3 order and it has become final. The fact that Ext.P2 order has not been implemented by the State machinery is not in dispute. The stand taken by the State, as revealed from Ext.P4 order is that Ext.P2 order could not be implemented since a large number of Parishioners belonging to Patriarch faction assembled at the premises of the Church and

obstructed the petitioner from entering inside the Church. Similarly, the stand taken by the State in the statement filed in the matter is that Ext.P2 order being one to be implemented in the premises of a holy place like the Church, the Police was unable to use the device of tear gas or adopt the means of firing, as it was feared that the same would endanger the lives of parishioners. It is also the stand of the State that Ext.P2 order can be given effect to only by convincing the Parishioners belonging to Patriarch faction to accept the reality of their failure in the litigation. The question before this court is as to whether the stand aforesaid of the State can be accepted for having not given effect to Ext.P2 order.

9. Rule of law is one of the basic features of our Constitution which pervade the whole constitutional fabric. In other words, the constitutional scheme is that it is for the law to rule and even the guardians of the law are to obey the law. It is said that wherever law ends, tyranny begins. The constitution fastens on all authorities a non-negotiable obligation to enforce orders of the court, as otherwise, rule of law cannot be preserved. Judicial remedies are provided to the stakeholders before and after an order is rendered. Once the stakeholders exhaust their remedies in respect of an order, the same has to be enforced in its letter and spirit to uphold the majesty of law. In our constitutional fabric, 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 order is presumed to have been issued consciously, having regard not only to the consequences of the decision but also the various hurdles in the process of its implementation. The question aforesaid has to be considered in the light of the above principles.

10. As noted, the stand of the State that Ext.P2 order could not be implemented since a large number of Parishioners belonging to Patriarch faction assembled at the premises of the Church and obstructed the petitioner from entering inside the Church is unacceptable. If the reason aforesaid is accepted for not giving effect to the order of a court, according to me, no order of any court can be enforced as it is not difficult in the present day social environment to arrange people to cause obstructions to the enforcement of an order by due process of law. The stand that the order can be given effect to only by convincing the Parishioners belonging to Patriarch faction to accept the reality of their failure in the litigation is equally unacceptable as by taking such a stand, the State is usurping indirectly the authority to decide the manner in which, and the time within which an order of the court is to be given effect to, which would, no doubt, be against the constitutional scheme. Such discretion, if conferred to the State, would go against the concept of the supremacy of the rule of law. The stand that the order being one to be enforced in the premises of a holy place like the Church, the Police

was unable to use the device of tear gas or adopt the means of firing for enforcing the order, as it was feared that the same would endanger the lives of Parishioners is also not acceptable. Here again, the State is negotiating with the judiciary for discretion, whether or not to abide by the order of the court, pretending that if such discretion is not conferred, the implementation of the order of the court would be at the cost of the life of the people. I do not think that the State with the powers conferred in terms of the various enactments, is in a helpless situation, not even capable of giving effect to an order in the nature of Ext.P2.

11. It is in the context of the helplessness expressed by the State in giving effect to Ext.P2 order that the petitioner has approached this Court in this writ petition seeking directions to the district administration to invoke the powers vested in them under Chapters VIII and X of the Code of Criminal Procedure and also the Kerala Police Act, 2011.

12. Incidentally, I must also note that the Church involved in this matter indisputably being a Parish Church of the Malankara Orthodox Syrian Church, in the light of the decision of the Apex Court in **K.S.Varghese and Others v. St.Peter's and St.Paul's Syrian Orthodox Church and Others**, (2017) 15 SCC 333, the same has to be administered in accordance with the 1934 Constitution of the Malankara Orthodox Syrian Church. Ext.P1 order, in essence, is one

issued for administration of the Church in accordance with the 1934 Constitution of the Malankara Orthodox Syrian Church.

13. Having regard to the facts of this case as disclosed from the pleadings of the parties, and having regard to the provisions contained in Chapters VIII and X of the Code of Criminal Procedure and Sections 63 and 67 of the Kerala Police Act, 2011, the writ petition is disposed of 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.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

APPENDIX OF WP(C) 25089/2019

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE ORDER DATED 21/07/2018 IN I.A. NO.830/2018.
EXHIBIT P2	TRUE COPY OF THE ORDER DATED 23/11/2018 IN I.A. NO.2738/2018 IN O.S. NO.162/2018 ON THE FILES OF MUNSIFF'S COURT, MUVATTUPUZHA.
EXHIBIT P3	TRUE COPY OF TH JUDGMENT DATED 18/12/2018 IN OPC NO.3147/2018.
EXHIBIT P4	TRUE COPY OF THE ORDER ISSUED BY THE DISTRICT COLLECTOR DATED 21/12/2018.
EXHIBIT P5	TRUE COPY OF THE AFFIDAVIT FILED BY THE CONTEMNOR WITHOUT ANNEXURES.
EXHIBIT P6	TRUE COPY OF THE AFFIDAVIT AND PETITION IN IA NO.1284/2019 IN O.S.NO.162/2018 ON THE FILES OF MUNSIFF COURT, MUVATTUPUZHA.
EXHIBIT P7	TRUE COPY OF THE ORDER DATED 02/07/2019 IN SLP(C) NO.12461/2019.
EXHIBIT P8	TRUE COPY OF THE RECORD OF PROCEEDINGS DATED 06/09/2019 IN CA NO. 7115-7116/2019 ON THE FILES OF THE HON'BLE SUPREME COURT OF INDIA.
EXHIBIT P9	TRUE COPY OF THE REPRESENTATION DATED 18/09/2019 SUBMITTED TO THE 1ST RESPONDENT.
EXHIBIT P10	TRUE COPY OF THE REPRESENTATION DATED 19/09/2019 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
EXHIBIT P11	TRUE COPY OF THE RECEIPT ISSUED BY THE 3RD RESPONDENT.
EXHIBIT P12	TRUE COPY OF THE RECEIPT ISSUED BY THE 4TH RESPONDENT.
EXHIBIT P13	TRUE COPY OF THE REPRESENTATION DATED 19/09/2019.

EXHIBIT P14	TRUE COPY OF THE RECEIPT ISSUED FOR ACCEPTING EXHIBIT P13.
EXHIBIT P15	TRUE COPY OF THE NOTICE PUBLISHED BY THE VIOLATORS.
EXHIBIT P16	TRUE COPY OF THE PETITIONER'S REPRESENTATION DATED 15/07/2019 ALONG WITH 1ST RESPONDENT'S DIRECTION DATED 24/07/2019 AS ISSUED AS A SINGLE DOCUMENT UNDER TH RIGHT TO INFORMATION ACT.
EXHIBIT P17	TRUE COPY OF THE NEWS ITEM PUBLISHED IN MATHRUBHUMI DAILY DATED 21.9.2019 WITH THE TITLE KOZHIPPILLY CHAKKALAKKUDI CHAPPELIL VISHWASADEEPTHIYIL THIRUSHESHIPPU STHAPICHU
EXHIBIT P18	TRUE COPY OF THE NEWS ITEM PUBLISHED IN MALAYALA MANORAMA DAILY DATED 21.9.2019 WITH THE TITLE KOTHAMANGALAM CHERIYAPALLIYIL NINNU THIRUSHESHIPPU MAATTIYITTILLENNU SARKAR.
EXHIBIT P19	TRUE COPY OF THE PHOTOGRAPH SHOWING THE LAYING CEREMONY.
EXHIBIT P19 A	TRUE COPY OF THE PHOTOGRAPH SHOWING THE LAYING CEREMONY.
EXHIBIT P19 B	TRUE COPY OF THE PHOTOGRAPH SHOWING THE LAYING CEREMONY.
EXHIBIT P19 C	TRUE COPY OF THE PHOTOGRAPH SHOWING THE LAYING CEREMONY.
EXHIBIT P19 D	TRUE COPY OF THE PHOTOGRAPH SHOWING THE LAYING CEREMONY.
EXHIBIT P19 E	TRUE COPY OF THE PHOTOGRAPH SHOWING THE LAYING CEREMONY.
EXHIBIT P19 F	TRUE COPY OF THE PHOTOGRAPH SHOWING THE LAYING CEREMONY.
EXHIBIT P19 G	TRUE COPY OF THE PHOTOGRAPH SHOWING THE LAYING CEREMONY.
EXHIBIT P19 H	TRUE COPY OF THE PHOTOGRAPH SHOWING THE LAYING CEREMONY.

EXHIBIT P19 I	TRUE COPY OF THE PHOTOGRAPH SHOWING THE LAYING CEREMONY.
EXHIBIT P20	TRUE COPY OF THE FIR LODGED IN CRIME NO.1893/2019 ON THE FILES OF KOTHAMANGALAM POLICE STATION.
EXHIBIT P21	TRUE COPY OF THE FIR NO.1901/2019 OF KOTHAMANGALAM POLICE STATION.

RESPONDENT'S/S EXHIBITS:

ANNEXURE R4A	TRUE COPY OF THE FIR IN CRIME NO.1892/2019 OF KOTHAMANGALAM POLICE STATION.
ANNEXURE R4 (B)	TRUE COPY OF THE FIR IN CRIME NO.1893/2019 OF KOTHAMANGALAM POLICE STATION.
ANNEXURE R4 (C)	TRUE COPY OF THE FIR IN CRIME NO.1901/2019 OF KOTHAMANGALAM POLICE STATION.