

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 13TH DAY OF APRIL 2023 / 23RD CHAITHRA, 1945

WP(C) NO. 27081 OF 2019

PETITIONERS:

- 1 REV.FR.TIJO KURIAKOSE
AGED 37 YEARS
S/O. P. K. SCARIAH, VICAR, ST. THOMAS ORTHODOX
SYRIAN CHURCH, MAZHUVANNOOR - 686 669. PERMANENTLY
RESIDING AT MANALEL PUTHIYAPARAMBIL HOUSE,
AMAYANNOOR P. O., KOTTAYAM DISTRICT - 686019.
- 2 M.J.THOMAS THARAKAN
AGED 69 YEARS
S/O. M. M. JOSEPH THARAKAN, RESIDING AT
MADAPARAMBIL HOUSE, SOUTH MAZHUVANNOOR P. O.,
ERNAKULAM DIST., KERALA, PIN - 686 669.
- 3 VARGHESE MATHEW
AGED 65 YEARS
S/O. MATHAI, RESIDING AT MANGALATHU HOUSE, NORTH
MAZHUVANNOOR P. O., ERNAKULAM DIST.,
KERALA, PIN - 686 669.
- 4 GEORGE KURUVILLA
AGED 70 YEARS
S/O. KURUVILLA, RESIDING AT KULANGATTIL HOUSE,
KADAKKANADU P. O., KOLENCHERY, ERNAKULAM DIST.,
KERALA, PIN - 682 311.
- 5 ELDOW K.JOSEPH
AGED 54 YEARS
S/O. JOSEPH, RESIDING AT KALARIKKATHADATHIL HOUSE,
KADAKKANADU P. O., KOLENCHERY, ERNAKULAM DIST.,
KERALA, PIN - 682 311.

BY ADVS.
ROSHEN.D.ALEXANDER
TINA ALEX THOMAS
HARIMOHAN

RESPONDENTS :

- 1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY TO THE STATE, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, KERALA,
PIN CODE - 695001
- 2 STATE POLICE CHIEF
POLICE HEADQUARTERS, THIRUVANANTHAPURAM, KERALA,
PIN CODE - 695001.
- 3 DISTRICT COLLECTOR
COLLECTORATE, KAKKANAD, ERNAKULAM DIST.,
KERALA, PIN CODE - 682030.
- 4 DISTRICT POLICE CHIEF
ERNAKULAM RURAL, OFFICE OF DISTRICT POLICE CHIEF,
ALUVA, ERNAKULAM DIST., KERALA, PIN CODE - 683101.
- 5 REVENUE DIVISIONAL OFFICER
MUVATTUPUZHA, ERNAKULAM DIST., KERALA, PIN CODE -
686673.
- 6 DEPUTY SUPERINTENDENT OF POLICE
PERUMBAVOOR, ERNAKULAM DIST., KERALA, PIN CODE -
683542.
- 7 INSPECTOR OF POLICE STATION AND STATION HOUSE OFFICER
KUNNATHUNAD POLICE STATION, PATTIMATTOM, ERNAKULAM
DIST., KERALA, PIN CODE - 683562.
- 8 FR.ELDHOSE MOLEKUDIYIL
AGED 50 YEARS
MOLEKUDIYIL HOUSE, MANARI P. O., PIN - 686 673.

- 9 FR.JAISAL KAVUMA
AGED 26 YEARS
PUTHUSSERY HOUSE, VENGOOR P. O., PIN CODE - 683546.
- 10 FR.ELDHOSE V. K.
AGED 35 YEARS
VELLARINGAL HOUSE, PONJASSERY P. O., PERUMBAVOOR - 683
547.
- 11 FR. ELDHOSE NEDUNGOTTIL
AGED 50 YEARS
NEDUNGOTTIL HOUSE, THURUTHIPLY, VALAYANCHIRANGARA P. O.
- 683556.
- 12 FR. JOHN JOSEPH
AGED 55 YEARS
S/O. FR. JOSEPH, PATHICKAL HOUSE,
PERUMBAVOOR - 683 542.
- 13 V. P. MARKOSE
AGED 67 YEARS
S/O. PATHROSE, VAZHAKKUZHITHADATHIL,
KADAKKANADU P. O., KOLENCHERY - 682311.
- 14 ABRAHAM THOMAS
AGED 64 YEARS
S/O. THOMAS, THOTTAMATTATHIL HOUSE, NORTH MAZHUVANNOOR
P. O., VALAMBOOR - 686 669.
- 15 THAMBI ABRAHAM
AGED 59 YEARS
S/O. ABRAHAM, IRATTEL HOUSE, EZHIPPRAM,
KADAYIRUPPU P. O. - 682 311.
- 16 MATHEW N. ABRAHAM
AGED 71 YEARS
S/O. ABRAHAM, NEDUMPURATHU HOUSE,
SOUTH MAZHUVANNOOR P. O., ERNAKULAM - 686 669.

17 ST.GEORGE CHAPEL (EAE),
NORTH MAZHUVANNUR REPRESENTED BY ITS SECRETARY-M.M.JOSE
I S IMPEADED AS ADDL.R17 AS PER ORDER DATED 04-02-20
IN IA 1/20.

BY ADVS.

SHRI.ASOK M.CHERIAN, ADDL. ADVOCATE GENERAL
SRI.AJITH VISWANATHAN
S.K.PREMRAJ
SRI.P.V.ELIAS
SRI.P.THOMAS GEEVERGHESE
SRI.P.VISWANATHAN (SR.)
SRI.GEORGE THOMAS (MEVADA) (SR.)
SRIN.RAYNOLD FERNANDEZ
SRI.TONY THOMAS (INCHIPARAMBIL)
SRI.AMAL GEORGE
SMT.MEGHA CHANDRAN
C.ANILKUMAR (KALLESSERIL)
V.SARITHA
P.M.MANASH
REENU KURIAN
NEEMA NOOR MOHAMED
JAIN VARGHESE
NAVAS JAN A.
M.RAMESH CHANDER (SR.)

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.27081 of 2019

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Dated this the 13th day of April, 2023

JUDGMENT

1. This writ petition is filed by Vicars and Parishoners of the St.Thomas Orthodox Syrian Church, Mazhuvanoor, Ernakulam District seeking directions to stop the parallel administration and service in St.Thomas Orthodox Syrian Church, Mazhuvanoor by the respondents 8 to 15 or anybody acting under them or their agents and to direct the respondents 3 and 5 to maintain public order and tranquility in the church. A further prayer is made to ensure that the 1st petitioner, Priests and Vicars, Diocesan Metropolitan, Malankara Metropolitan of the Malankara Orthodox Church are not prevented from conducting religious services in the church in accordance with the 1934 Constitution. A further prayer is also made seeking directions to respondents 2, 4 and 6 to act strictly adhering to the decision of the Hon'ble Supreme Court in **K.S. Varghese v. St. Peter's & Paul's**

Syrian Orthodox Church and others [(2017) 15 SCC 333]

and to ensure that respondents 8 to 15 are not violating the law as declared by the Supreme Court in **K.S. Varghese's case.**

2. I have heard Sri.S. Sreekumar, the learned Senior Counsel appearing for the petitioners as instructed by Sri.Roshen D. Alexander, Sri.Asok M. Cherian, the learned Additional Advocate General appearing for respondents 1 to 7, the learned Senior Counsel Sri. Naveen R Nath appearing for respondent Nos.10 and 14 as instructed by Sri.P.V.Elias, Sri George Thomas Mevada, the learned Senior Counsel appearing for Respondent No.16 as instructed by Sri.Manu Kuruvila, Sri Ramesh Chander, the learned Senior Counsel appearing for Respondent 11 as instructed by Sri P.V Elias, the learned Senior counsel, Sri.P. Viswanathan as instructed by Sri Shibu Joseph appearing for respondents 8 and 13, Sri. P Thomas Geevarghese, appearing for Respondent No. 12 and 17 and Sri. S.K Premraj, the learned counsel appearing for Respondent 9 and 15.

3. It is submitted by the learned Senior Counsel appearing for the petitioners that the St. Thomas Orthodox Syrian Church, Mazhuvanoor, is one of the churches of the Malankara Orthodox Syrian Church and is included as Serial No.785 in the list of churches annexed to O.S No.4/1979. Exts.P1 is the the Kalpana of the Diocesan Metropolitan, Angamaly Diocese of the Malankara Orthodox Church appointing the 1st petitioner as the Vicar of St.Thomas Orthodox Syrian Church, Mazhuvanoor. It is submitted that St.Thomas Orthodox Syrian Church, Mazhuvanoor is admittedly a Constituent Church of the Malankara Orthodox Syrian Church and was founded in the year 1861. It is submitted that the parish assembly of the church convened during 1964 and 1998 and declared allegiance to 1934 constitution and Ext.P2 minutes is also produced. It is also submitted that at present there are no civil suits pending.
4. It is submitted that pursuant to **K.S.Varghese's case** petitioners submitted Ext.P7 representation before

respondents 1 to 7 seeking necessary assistance to enforce the judgment and also requested to remove all the obstruction so as to enable the vicar and his assistants duly appointed under the 1934 constitution to conduct religious services in St. Thomas Orthodox Syrian Church, Mazhuvanoor and its two chapels namely St. Marys Chapel, Thattamughal and St.George Chapel, Mangalathunada and its 'Kurishintottikal' to facilitate a peaceful atmosphere in the administration of church and for religious services. It is submitted that even after Ext.P7 representation, respondents 8 to 15 and their supporters are causing obstructions and misappropriating the properties of the Church. 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.

5. 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)**.

6. 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].
7. Respondents 9,10,11,12 and 14 have filed counter affidavit contending that the church is not a constituent church of

Malankara Orthodox Syrian Church and that the 1st petitioner is not the Vicar of the Church and he is not a priest ordained or appointed by the lawful metropolitan of the church. It is contended that the 8th respondent is the lawful vicar and the 9th and 10th respondents are the lawful Assistant Vicars of the church and that the 11th and 12th respondents are the lawful vicars of St. Mary's Jacobite Syrian Chapel, Thattumukal and St. George Jacobite Syrian Chapel, Mangalathnada respectively. It is contended that the correct name of the church in question is St. George Jacobite Syrian Cathedral Valiyapalli, Mazhuvannoor. It is contended that Ext.P1 is not sustainable and that Yuhanon Mar Policarpose is not the Metropolitan of the Angamaly Diocese as per 1934 Constitution and that petitioners have not accepted the present patriarch of the Antioch, H.H.Moran Mor Ignatius Aphrem II. It is also contended that petitioners have suppressed the material facts while filing this writ petition. It is also contended that the church has not been included in the list of churches annexed to O.S.No.4 of 1979 and that the writ petition is filed in

collusion with the 16th respondent. It is also contended that there is no parallel administration in the church, as alleged by the petitioners.

8. Adv.M.Ramesh Chander, the learned Senior Counsel appearing for the 11th respondent submits that even if it is admitted that the decree of the Apex Court in **K.S. Varghese's case** is binding on the parish church in question, the decree has to be duly executed in terms of Order XLV Rule 15 Civil Procedure Code. It is submitted that E.P.No.1/2009 in O.S.No.4/1979 is pending before this Court. It is stated that Section 47 of the CPC provides that all questions arising between parties to the suit in which a decree was passed and relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit. It is further stated that Order XII of the Supreme Court Rules, 2013 provide the procedure for drawing up of a decree. It is submitted that unless there is a decree as drawn up under the said Rules and unless such decree is enforced through due execution proceedings, the same cannot

be enforced through a writ petition for police protection. It is stated that the instant case is not a fit case for ordering police protection at all, since the church is only an ordinary litigant and the law of the land has to be applied in full force to such litigant as well.

9. The 9th respondent has placed an additional counter affidavit on record. Respondents 8 and 13 have also filed counter affidavit contending that the name of the church is Jacobite Syrian Church from the time of its formation and in 2011 it was renamed as St. Thomas Jacobite Cathedral. It is submitted that the person claiming to be the present Catholicos cannot be accepted, since the procedure laid down in the 1934 constitution was not followed and that that hence he has no *locus standi* to issue Ext.P1. It is also contended that there is no church by name St.Thomas Cathedral, Mazhuvannoor listed in O.S.No.4 of 1979 and that the intention of the petitioners is to raise a false claim over the church by misleading the Court. Respondents 8,13 and 15 have also filed an additional counter affidavit on record.

10. Respondents 12 and 17 have filed counter affidavit contending that the 12th respondent's chapel is an Evangelistic Chapel and that the additional 17th respondent is totally a different entity administered by Evangelistic Association of the East and is neither a Jacobite Chapel nor an Orthodox chapel or an institution falling under the Malankara Church. It is contended that the name of the 17th respondent Chapel is absent in the list of 1064 churches, since it is not administered by the Malankara Church or the Jacobite Syrian Christian Church. It is also contended that the writ petition is bad for non-joinder of necessary parties.

11. Adv. Naveen R Nath, the learned Senior Counsel appearing for the party respondents admits that the law declared by the Apex Court is binding on all courts and is liable to be enforced by all authorities. However, it is contended that the judgment in **K.S.Varghese's** case is authority only on what it decides. It is submitted that the observations in paragraph 154 of the judgment of the larger Bench in **Rev.P.M.A Metropolitan**

and others v. Moran Mar Marthoma and another 1995 (Supp)9)4 SCC 286] are reiterated in **K.S. Varghese** at paragraph 79. It is stated that since the church in question is admittedly a Parish Church, the legal standards required even for the the purpose for invoking the obligations under Article 144 have not been met in the present case. The writ petition is an attempt to seek a decree without an adjudicatory process and constitutes an attempt to bypass Section 9 of the C.P.C. It is contented that for a judgment of the Apex Court to be implemented, a decree has to be drawn up in accordance with the provisions of the Supreme Court Rules and the decree has to be executed in a manner known to law. The learned counsel draws the attention of this Court to Order XLV of the C.P.C and contends that a decree of the Apex Court is to be executed in terms of the Rule 15 thereof and not by filing a writ petition for police protection. Reference is also made to Section 47 CPC as also Rule 101 to 103 of Order XX1 to contend that where there is a due procedure provided for execution of a decree and where an execution petition has been filed before the executing court, there can be no prayer for police

protection to implement the directions without a proper decree being drawn up.

12. The learned Senior Counsel for the petitioners on the other hand contended that the very same questions have been repeatedly raised before this Court and has been considered in **Marthoman Church, Mulanthuruthy & Ors. v. State of Kerala & Ors.** [2020 (3) KHC 448] and **Fr.A.V.Varghese v. State of Kerala** [2021 (5) KLT 14] and that the arguments are being raised only to defeat the ends of justice. It is further contended that this Court had specifically considered the applicability of Order XLV in the decision reported in **Sony Markose and others v. Ouseph Cherian and others** [2018(4) KLT 745] and had clearly held that in cases like the instant one where appeals are filed after obtaining special leave of the Supreme Court under Article 136 of the Constitution that Order XLV would be applicable.

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.The 15th respondent has also placed a counter affidavit on record, accepting the contentions of the other party respondents.

15.Reply affidavits have been placed on record by the petitioners.

16.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”.

17. 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.”

18. 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).

19.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).

20.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.Thomas's Orthodox Church, Mazhuvannoor 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 other faction 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.**

21.The contentions that the chapels and kurishadis of the enlisted church are not separately enlisted and that they cannot be made subject matter of a writ petition for police protection also cannot be accepted. It is the specific case of the petitioner that the chapels belong to the church in question. If that be so, they are also liable to be administered as part of the constituent churches themselves. The judgment of the Apex Court is clearly binding on members of all factions and the parishioners of the constituent churches. The Apex Court having held that the property of the Malankara Church in which is also vested the property of the parish churches would remain in trust and that no one can claimed to be owners thereof even by majority, the respondent cannot make any independent claims to any of the properties belonging to the constituent churches.

22. Though the 12th respondent raises a contention that the 17th respondent Chapel is not part of the property of the St. Thomas Orthodox Syrian Church, no records are produced in support of the said contention. The said claim has also not been raised in any other proceeding in a manner known to law. The petitioners have filed a reply affidavit refuting the contention and producing material to show that the respondents themselves have treated the St. Mary's Chapel and the St. George Chapel, Mangalathunada as part of the properties of the Mazhuvannur St. Thomas Jacobite Syrian Cathedral in Exhibit P21. In the above view of the matter, I am of the opinion that the contention raised by the 12th respondent with regard to the Chapels also cannot be accepted.

23. 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.

24. 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.

25.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. 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.

26. 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.

27.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.

28.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.

In the result, this writ petition is allowed. There will be a direction to respondents 3 to 5 to render necessary assistance to the petitioners to peacefully enter the St.Thomas Orthodox

Syrian Church, Mazhuvannoor 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) 27081/2019

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE KALPANA BEARING NO.AD/YMP/03/2019 DATED 10.01.2019 ISSUED BY THE DIOCESAN METROPOLITAN OF ANKAMALY DIOCESE.
- EXHIBIT P2 TRUE COPY OF THE MINUTES OF THE MEETING DATED 25.1.1998 OF THE PARISH ASSEMBLY OF ST. THOMAS ORTHODOX SYRIAN CHURCH, MAZHUVANNOOR RECORDED IN PAGE NOS. 209 TO 213 OF THE PARISH ASSEMBLY DIARY.
- EXHIBIT P3 TRUE COPY OF THE ORDER DATED 19.4.2018 IN CIVIL APPEAL NO.3986-3989 OF 2018.
- EXHIBIT P4 TRUE COPY OF THE ORDER DATED 8.4.2019 IN SLP(C) NO.8303 OF 2019.
- EXHIBIT P5 TRUE COPY OF ORDER DATED 2.7.2019 IN SLP(C) NO.12461.
- EXHIBIT P6 TRUE COPY OF THE ORDER DATED 6.9.2019 IN CIVIL APPEAL NO.(S) 7115-7116/2019 ARISING FROM SLP(C) NOS.20661-20662/2019.
- EXHIBIT P7 TRUE COPY OF THE REPRESENTATION DATED 21.9.2019 SUBMITTED BY PETITIONERS 1 AND 4 TO RESPONDENTS 1 TO 7.
- EXHIBIT P7 (a) TRUE COPY OF THE POSTAL RECEIPTS DATED 21.9.2019
- EXHIBIT P8 TRUE COPY OF JUDGMENT DATED 3.1.2019 IN W.P.(C) NO.30474/2018.

- EXHIBIT P9 TRUE COPY OF THE REFERENCE ORDER DATED 16.7.2019 IN CONTEMPT CASE NO.866 OF 2019.
- EXHIBIT P10 TRUE COPY OF THE COMPLAINT DATED 31.8.2019 SUBMITTED BY THE 1ST PETITIONER TO THE MANAGER, STATE BANK OF INDIA, KOLENCHERY BRANCH.
- EXHIBIT P11 TRUE COPY OF THE COMPLAINT DATED 31.8.2019 SUBMITTED BY THE 1ST PETITIONER TO THE SECRETARY, THE MAZHUVANNOOR SERVICE CO-OPERATIVE BANK.
- EXHIBIT P12 TRUE COPY OF THE KALPANA BEARING NO.77/2009 ISSUED BY THE THEN CATHOLICOS AND MALANKARA METROPOLITAN TO H.G YUHANON MAR POLICARPOSE, THE DIOCESAN METROPOLITAN
- EXHIBIT P13 TRUE COPY OF THE KALAPANA BEARING NO. 110/2009 DTD. 06.03.2009 INFORMING ABOUT APPOINTMENT OF H.G YUHANON MAR POLICARPOSE AS THE DIOCESAN METROPOLITAN AND THE SAME THE FORMAT IN APPONRDI'P WAS PER THE EXHIBIT P14:
- EXHIBIT P14 TRUE COPY OF THE FORMAT IN APPENDIX ii AS PER THE DIRECTION OF THE HON'BLE SUPREME COURT.
- EXHIBIT P15 TRUE COPY OF THE RELEVANT PAGES OF THE ATTENDANCE REGISTER OF THE MALANKARA ASSOCIATION HELD ON 20.03.2002 FURNISHING THE NAMES OF TWO REPRESENTATIVES OF ST. THOMAS CHURCH.
- EXHIBIT P15 TRUE COPY OF THE RELEVANT PAGES OF THE ATTENDANCE REGISTER OF THE MALANKARA ASSOCIATION HELD ON 20.03.2002 FURNISHING THE NAMES OF TWO REPRESENTATIVES OF ST. THOMAS CHURCH.

- EXHIBIT P16 TRUE COPY OF RELEVANT PAGES OF THE ATTENDANCE REGISTER OF THE REPRESENTATIVES OF THE ANGAMLALY DIOCESE WHO WERE REPRESENTED THE CHURCH IN MALANKARA SUNYANI CHRISTIANI ASSOCIATION HELD ON 26.12.1958.
- EXHIBIT P17 TRUE COPY OF AUTHORIZATION LETTER AUTHORISING THE REPRESENTATIVES OF THE MAZHUVANNOR CHURCH TO PARTICIPATE IN THE MALANKARA SURIYANI CHRISTIANI ASSOCIATION HELD ON 28.12.1965.
- EXHIBIT P18 TRUE COPY OF THE THE RELEVANT PAGES OF THE ATTENDANCE REGISTER OF REPRESENTATIVES OF THE ANGAMALY DIOCESE WHO PARTICIPATED IN THE MALANKARA SURNYANI CHRISTIANI ASSOCIATION DATED 31.12.1970 AT M.D SEMINARY, KOTTAYAM.
- EXHIBIT P19 TRUE COPY OF THE RELEVANT PAGES OF THE ATTENDANCE REGISTER OF THE MALANKARA SYRIAN ASSOCIATION HELD AT PARUMALA SEMINARY ON 21.03.2007
- EXHIBIT P20 TRUE COPY OF THE COMPLAINT SUBMITTED BEFORE THE SHO, KUNNATHUNADU POLCE STATION ON 25.10.2019
- EXT.P21 TRUE COPY OF TRUE COPY OF THE OF THE PAGES 27 TO 31 OF MAGAZINE TITLED 'MAZHUVANNOOR ST. THOMAS JACOBITE SYRIAN CATHEDRAL SMARANIKA 2012.
- EXT.P22 TRUE COPY OF THE OF THE RELEVANT PORTIONS STATING HISTORY OF ST. MARY'S CHAPEL AND ST. GEORGE CHAPEL PUBLISHED IN THE MARKETING SUPPLEMENT DATED 24/10/2008.

EXT.P23 TRUE COPY OF THE OF THE RELEVANT PAGES SHOWING THE HISTORY OF ST. GEORGE CHAPEL IN THE MAGAZINE TITLED 'MAZHUVANNOOR ST. THOMAS JACOBITE SYRIAN CATHEDRAL SMARANIKA -2012

EXT.P24 TRUE COPY OF THE OF PAGE NOS. 212, 213, 232, 233 OF THE MAGAZINE TITLED 'MAZHUVANNOOR ST. THOMAS JACOBITE SYRIAN CATHEDRAL SMARANIKA - 2012' SHOWING THE LIST OF FAMILY UNITS UNDER ST. THOMAS CHURCH AND LIST OF MEMBERS IN ST.LUKE'S FAMILY COURT.

EXT.P25 TRUE COPY OF THE OF PHOTORAPHS AND NAMES OF MANAGING COMMITTEE MEMBERS OF ST. THOMAS CHURCH GOVERNING UNDER THE 2002 CONSTITUTION PUBLISHED IN 'MAZHUVANNOOR ST. THOMAS JACOBITE SYRIAN CATHEDRAL SMARANIKA - 2012'

RESPONDENT EXHIBITS

EXHIBIT R7 (A) THE PHOTOSTAT COPY OF RELEVANT PAGE OF O.S.NO.4 OF 1979 ON THE FILES OF HON'BLE HIGH COURT OF KERALA SHOWING SERIAL NO.681.

EXHIBIT R12 (A) PHOTOGRAPH OF ST.GEORGE CHAPEL (EAE) NORTH MAZHUVAOOR, TAKEN ON 1ST FEBRUARY 2020

EXHIBIT R12 (B) TRUE COPY OF THE CERTIFICATE ISSUED BY
THE EVANGELISTIC ASSOCIATION OF THE EAST
, REGARDING 12TH RESPONDENT'S
APPOINTMENT IN ST GEORGE CHAPEL

EXHIBIT R12 (C) TRUE COPY OF OWNERSHIP CERTIFICATE
ISSUED BY THE GRAMA PANCHAYAT

EXHIBIT R12 (D) TRUE COPY OF THE PLAINT IN OS 4/1976 OF
HIGH COURT

EXHIBIT R12 (E) TRUE COPY OF THE FINAL LIST OF CHURCHES
OF ANGAMALY DIOCESES OF MALANKARA
ASSOCIATION, FOR THE PERIOD 2017-2020

Exhibit R9 (a) TRUE PHOTOSTAT COPY OF THE GO(MS) NO.
114/2021 GAD DT. 03.06.2021.

EXT.R9 (B) PHOTO COPY OF LETTER NO.E1 62/19
DT.27.9.2019

EXT.R13 (A) PHOTOSTAT COPY OF RELEVANT PAGE OF OS
4/1979 ON THE FILES OF THIS COURT
SHOWING SERIAL NO.785

EXT.R13 (B) PHOTO COPY OF IA 780037 OF 2019 IN COC
1022/2019

EXT.R13 (C) PHOTO COPY OF THE SUPREME COURT (DECREE
AND ORDERS) ENFORCEMENT ORDER, 1954.

EXT.R15 (A) PHOTO COPY OF THE CONSTITUTION OF THE
SYRIAC ORTHODOX CHURCH OF ANTIOCH

EXT.R15 (B) TRUE COPY OF THE ENGLISH TRANSLATION OF
THE HOODOYO CANON

W.P.(C).No.27081 of 2019

38

EXT R15 (C)

TRUE COPY OF THE GO (MS) 114/2021 GAD
DT.3.6.21.

TRUE COPY

PS TO JUDGE