

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 11TH DAY OF FEBRUARY 2020 / 22ND MAGHA, 1941

RP.No.41 OF 2020 IN WP(C). 25089/2019

AGAINST THE JUDGMENT IN WP(C) 25089/2019(I) OF HIGH COURT OF KERALA

REVIEW PETITIONERS (RESPONDENTS 5 & 9 IN THE WRIT PETITION :

1 FR.BIJU VARKEY,
AGED 45 YEARS,
SON OF VARKEY, KORATTIYIL HOUSE,
MUDAVOOR KARA, VELLOORKKUNNAM VILLAGE, MUVATTUPUZHA,
PIN-686673.

2 FR.BIBIN C.U.,
AGED 40 YEARS,
SON OF ULAHANNAN, CHERUKUNNEL HOUSE,
THEKKEN MARADY KARA, MARADY VILLAGE,
MUVATTUPUZHA TALUK, PIN-686673.

BY ADVS.
SRI.S.VINOD BHAT
KUM.ANAGHA LAKSHMY RAMAN

RESPONDENTS (PETITIONER AND RESPONDENTS 1 TO 4,
6 TO 8 AND 10 TO 12 IN THE WRIT PETITIONER :

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

2 THE DISTRICT COLLECTOR,
KAKKANAD, ERNAKULAM-682030.

3 REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA-686669.

4 DEPUTY SUPERINTENDENT OF POLICE,
MUVATTUPUZHA-686669.

- 5 INSPECTOR OF POLICE,
KOTHAMANGALAM POLICE STATION,
KOTHAMANGALAM-686691.
- 6 FR.MONCY N.ABRAHAM,
AGED ABOUT 54 YEARS, S/O.ABRAHAM,
NIRAVATHUKANDATHIL HOUSE,
NELLIMATTOM KARA, KOTHAMANGALAM,
KOTHAMANGALAM, PIN-686693.
- 7 FR.GEEVARGHESE M.T.,
AGED ABOUT 54 YEARS, S/O.THOMAS,
MANNARAMBIL HOUSE, AAZHAKOM KARA,
MUKKANNOOR VILLAGE, ALUVA TALUK,
MUKKANNOOR-683577.
- 8 FR.BASIL K.PHILIP,
AGED ABOUT 39 YEARS, S/O.PHILIP,
KOTTICKAL HOUSE, PADIKKAPPU KARA,
MANNAMKANDAM VILLAGE,
DEVIKULAM TALUK, PIN-685561.
- 9 SALIM CHERIAN,
AGED ABOUT 62 YEARS,
S/O.CHERIAN, MALIYIL HOUSE,
ILLAVANADU KARA, KOTHAMANGALAM-686691.
- 10 JOHNSON KURIAKOSE,
AGED 52 YEARS, S/O.KURIAKOSE,
THEKKILAKKATTU HOUSE, KOZHIPPILLY KARA,
VARAPETTY, KOTHAMANGALAM-686691.
- 11 MANOLIN KUNJACHAN,
AGED 40 YEARS, S/O.KUNJACHAN,
THACHAMATTAM, MANAGALATH HOUSE,
ANGADI, KOTHAMANGALAM-686691.

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON
11.02.2020, ALONG WITH RP.96/2020, RP.115/2020, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 11TH DAY OF FEBRUARY 2020 / 22ND MAGHA, 1941

RP.No.96 OF 2020 IN WP(C). 25089/2019

AGAINST THE ORDER/JUDGMENT IN WP(C) 25089/2019(I) OF HIGH COURT
OF KERALA

REVIEW PETITIONERS/RESPONDENT NOS.1 TO 4:

- 1 THE DISTRICT COLLECTOR,
KAKKANAD, ERNAKULAM-682 030.
- 2 REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA-686 669.
- 3 DEPUTY SUPERINTENDENT OF POLICE,
MUVATTUPUZHA-686 669.
- 4 INSPECTOR OF POLICE,
KOTHAMANGALAM POLICE STATION,
KOTHAMANGALAM-686 691.

BY ADV. SRI.K.V.SOHAN, STATE ATTORNEY

RESPONDENTS/PETITIONER AND RESPONDENT NOS.5 TO 12 IN WP(C) :

- 1 FR.THOMAS PAUL RAMBAN,
S/O LATE PAULOS, MARACHERIL HOUSE,
KUTHUKUZHI KARA, KOTHAMANGALAM VILLAGE,
KOTHAMANGALAM TALUK, PIN-686 691.
- 2 FR.BIJU VARKEY,
S/O VARKEY, KORATTIYIL HOUSE, MUDAVOOR KARA,
VELLOORKUNNAM VILLAGE, MUVATTUPUZHA TALUK,
PIN-686 673.
- 3 FR. MONCY N.ABRAHAM,
S/O ABRAHAM, NIRAVATHUKANDATHIL HOUSE,
NELLIMATTOM KARA, KUTTAMANGALAM VILLAGE,
KOTHAMANGALAM TALUK, PIN-686 693.
- 4 FR. GEEVARGHESE M.T,
S/O THOMAS MANNARAMBIL HOUSE,

ASZHAKAOM KARA, MUKKANNOOR VILLAGE,
ALUVA TALUK, PIN-683 577.

- 5 FR. BASIL K. PHILIP,
S/O PHILIP, KOTTICKAL HOUSE, PADIKKAPPU KARA,
MANNAMKANDAM VILLAGE,
DEVIKULAM TALUK, PIN-685 561.
- 6 FR. BIBIN C.U,
S/O ULAHANNAN, CHERUKUNNEL HOUSE,
THEKKENMARADY KARA, MARADY VILLAGE,
MUVATTUPUZHA TALUK, PIN-686 673.
- 7 SALIM CHERIAN,
S/O CHERIAN, MALIYIL HOUSE, ILAVANADU KARA,
KOTHAMANGALAM-686 691.
- 8 JOHNSON KURIAKOSE,
S/O KURIAKOSE, THEKKILAKKATTU HOUSE,
KOZHIPILLY KARA, VARAPETTY,
KOTHAMANGALAM-686 691.
- 9 MANOLIN KUNJACHAN,
S/O KUNJACHAN, THACHAMATTAM MANGALATH HOUSE,
ANGADI, KOTHAMANGALAM, PIN-686 691.

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON
11.02.2020, ALONG WITH RP.41/2020, RP.115/2020, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 11TH DAY OF FEBRUARY 2020 / 22ND MAGHA, 1941

RP.No.115 OF 2020 IN WP(C). 25089/2019

AGAINST THE JUDGMENT IN WP(C) 25089/2019(I) OF HIGH COURT OF
KERALA

REVIEW PETITIONER/3RD PARTY :

CHARLEY MATHEW,
AGED 48 YEARS,
S/O.M.P.MATHEW, PUTHEECKAL HOUSE,
NELLIKUZHY.P.O., KOTHAMANGALAM,
ERNAKULAM DISTRICT-686691.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS/PETITIONER AND RESPONDENTS 1 TO 12 :

- 1 FR. THOMAS PAUL RAMBAN,
AGED 47 YEARS,
S/O.LATE POULOSE, MARACHERIL HOUSE,
KUTHUKUZHI KARA, KOTHAMANGALAM VILLAGE,
KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT-686691.
- 2 THE DISTRICT COLLECTOR,
KAKKANAD, ERNAKULAM DISTRICT-682030.
- 3 THE REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA, ERNAKULAM DISTRICT-686669.
- 4 THE DEPUTY SUPERINTENDENT OF POLICE,
MUVATTUPUZHA, ERNAKULAM DISTRICT-686691.
- 5 THE INSPECTOR OF POLICE,
KOTHAMANGALAM POLICE STATION,
KOTHAMANGALAM-686691.
- 6 FR.BIJU VARKEY,
AGED 43, S/O.VARKEY, KORATTIYIL HOUSE,
MUDAVOOR KARA, VELOORKUNNAM VILLAGE,
MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT-686673.
- 7 FR.MONCY N ABRAHAM,

AGED 55, S/O.ABRAHAM, NIRAVATHUKANDATHIL HOUSE,
NELLIMATTOM KARA, KUTTAMANGALAM VILLAGE,
KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT-686693.

- 8 FR.GHEEVARGHESE.M.T.,
AGED 55, S/O.THOMAS, MANNARAMBIL HOUSE,
AZHAKOM KARA, MUKKANNOOR VILLAGE, ALUVA TALUK,
ERNAKULAM DISTRICT-683577.
- 9 FR.BASIL K PHILIP,
AGED 40, S/O.PHILIP, KOTTICKAL HOUSE,
PADIKKAPPU KARA, MANNAMKANDAM VILLAGE,
DEVIKULAM TALUK, IDUKKI DISTRICT-685561.
- 10 FR.BIBIN.C.U.,
AGED 38, S/O.ULAHANNAN, CHERUKUNNEL HOUSE,
THEKENMARADY KARA, MARADY VILLAGE,
MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT-686673.
- 11 SALIM CHERIAN,
AGED 63, S/O.CHERIAN, MALIYIL HOUSE,
ILAVANAD KARA, KOTHAMANGALAM,
ERNAKULAM DISTRICT-686691.
- 12 JOHNSON KURIAKOSE,
AGED 53, S/O.KURIAKOSE, THEKKILAKKATTU HOUSE,
KOZHIPILLY KARA, VARAPPETTI, KOTHAMANGALAM,
ERNAKULAM DISTRICT-686691.
- 13 MANOLIN KUNJACHAN,
AGED 41, S/O.KUNJACHAN, THACHAMATTAM,
MANGALATH HOUSE, ANGADI, KOTHAMANGALAM,
ERNAKULAM DISTRICT-686691.

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON
11.02.2020, ALONG WITH RP.41/2020, RP.96/2020, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:

ORDER

[RP.41/2020, RP.96/2020, RP.115/2020]

Dated this the 11th day of February 2020

These review petitions are preferred seeking review of the judgment of this court in W.P.(C)No.25089 of 2019 dated 03.12.2019. Among the review petitions, R.P.No.41 of 2020 is preferred by respondents 5 and 9 in the writ petition, R.P.No.96 of 2020 is preferred by respondents 1 to 4 in the writ petition, and R.P.No.115 of 2020 is preferred by a third party. As the review petitions arise from the very same judgment, they are disposed of by this common order. The parties are referred to in the order unless otherwise mentioned, as they appear in the writ petition.

2. 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.

3. 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.

4. Although the petitioner 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. The petitioner, in the circumstances, approached this Court for 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.”

5. A statement has been filed in the matter by the fourth respondent, the concerned Inspector of Police. It is 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 cannot be attempted in the premises of a holy place like the Church.

6. In so far as it is admitted by the State that Ext.P2 order which has become final has not been implemented and in so far as it is found that the reasons stated by the State Government

for not implementing Ext.P2 order cannot be accepted, this Court disposed of the writ petition 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.”

The review petitioners are aggrieved by the said decision of this court.

7. Heard the learned counsel for the review petitioners as also the learned Senior Counsel for the petitioner in the writ petition.

8. The State Attorney appearing for the petitioners in R.P.No.96 of 2020 contended that in the light of the decision of the Apex Court in **Varghese v. St.Peter's & Paul's Syrian Orthodox Church** [2017(3) KLT 261(SC)], the very suit in which Ext.P1 order of temporary injunction was passed, which was directed to be implemented in terms of Ext.P2 order as affirmed by this Court in Ext.P3 order, is not maintainable. According to the learned State Attorney, in so far the suit is not maintainable, this Court ought not have issued directions for implementation of Ext.P1 order. The learned counsel for the petitioner in R.P.No.115 of 2020 reiterated the contention taken by the learned State Attorney on behalf of the petitioners in R.P.No.96 of 2020. The learned counsel for the petitioners in R.P.No.41 of 2020 contended that the relief granted in the writ petition is far beyond the scope of the relief asked for by the petitioner. It was also contended by the learned counsel that even though the petitioner has claimed for such other further direction that may be deemed to be just and equitable in the facts and circumstances of the case, the relief

under the said residuary prayer shall not go beyond the scope of the main relief sought for in the writ petition. Placing reliance on the decision of the Apex Court in **Muni Suvrat Swami Jain S.M.P.Sangh v. Arun Nathuram Gaikwad & Ors.** [AIR 2007 Supreme Court 38], the learned counsel contended that what is sought by the petitioner in the writ petition in essence, is only a writ of mandamus and the directions issued do not conform to the scope of a writ of mandamus. It is further contended by the learned counsel that on 07.01.2020, the Kerala Christian Cemeteries (Right to Burial of corpse) Ordinance, 2020 was promulgated by the State Government and the direction contained in the judgment that, if the body of any Parishioner is to be buried, the religious services required for the same shall be rendered by the petitioner goes against the Ordinance.

9. I have bestowed my attention to the contentions urged by the learned counsel for the review petitioners.

10. The contention raised by the petitioners in R.P.No.96 of 2020 is a contention that is neither taken in the statement filed in the matter nor argued at the time of hearing. I do not think that the petitioners are therefore entitled to seek review of the judgment on that ground.

11. The contention taken by the petitioner in R.P.No.115 of 2020 that the suit itself is not maintainable is a

contention which he ought to have taken in the suit. Insofar as the order of injunction passed by the court and the order issued by the court subsequently for enforcing the order of injunction have become final and binding the review petitioner who is a party to the suit, he cannot be heard to contend that the suit is not maintainable, in a proceedings for enforcement of the orders of the civil court which have become final.

12. As regards the contention taken by the petitioners in R.P.No.41 of 2020, it is relevant to note that the essence of the reliefs sought in the writ petition was for appropriate direction to give effect to Ext.P2 order as affirmed by this court in terms of Ext.P3 order. The reliefs granted by the court in terms of the judgment sought to be reviewed are exactly intended for the said purpose and it cannot therefore be contended that the reliefs granted was far beyond the scope of the reliefs sought for in the writ petition. Even otherwise, Article 226 of the Constitution of India confers power on this court to issue to any person or any authority, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them for the enforcement of fundamental right or for any other purpose. In the light of the said provision, according to me, in appropriate cases, the court can go beyond the scope of the specific writs mentioned in Article 226 also in the

matter of granting reliefs to the parties.

13. The Kerala Christian Cemeteries (Right to Burial of corpse) Ordinance, 2020 provides that the relatives of the deceased member of a parish may forego funeral services in church or its cemetery or opt for funeral services at any other premises by a priest of their choice. In the light of the said provision, the judgment sought to be reviewed needs to be clarified to the effect that relatives of the deceased members of parish may forgo funeral services in the church or its cemetery or opt for funeral services at any other premises by a priest of their choice.

In the result, these review petitions are disposed of with the clarification mentioned in paragraph 13.

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Sd/-
P.B.SURESH KUMAR,
JUDGE