

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 18TH DAY OF DECEMBER, 2018/27TH AGRAHAYANA, 1940

OP(C).No. 3147 of 2018

AGAINST THE ORDER DATED 23.11.2018 IN IA NO.2738/2018 IN

OS NO.162/2018 of MUNSIF'S COURT, MUVATTUPUZHA

PETITIONER:

JOHNSON KURIAKOSE,
AGED 52 YEARS,
SON OF KURIAKOSE,
THEKKILAKATTU HOUSE,
KOZHIPILLY KARA,
VARAPETTY,
KOTHAMANGALAM. PIN 686 691.

BY ADVS.SRI.R.D.SHENOY (SENIOR ADVOCATE)
SRI.S.VINOD BHAT
MS.ANAGHA LAKSHMY RAMAN

RESPONDENT:

- 1 FR. THOMAS PAUL RAMBAN,
AGED 46 YEARS
SON OF LATE PAULOSE,
MARACHERIL HOUSE,
KUTHUKUZHI KARA,
KOTHAMANGALAM VILLAGE,
KOTHAMANGALAM TALUK. PIN 686 691.
- 2 FR. BIJU VARKEY,
SON OF VARKEY, KORATTIYIL HOUSE,
MUDAVOOR KARA, VELLOORKUNNAM VILLAGE,
MUVATTUPUZHA TALUK. PIN 686 673.
- 3 FR. MONCY N. ABRAHAM,
SON OF ABRAHAM, NIRAVATHUKANDATHIL HOUSE,
NELLIMATTOM KARA,
KUTTAMANGALAM VILLAGE,
KOTHAMANGALAM TALUK. PIN 686 693.

- 4 FR. GEEVARGHESE M.T. ,
SON OF THOMAS ,
MANNARAMBIL HOUSE ,
AAZHAKAM KARA , MUKANNOOR VILLAGE ,
ALUVA TALUK. PIN 683 577.
- 5 FR. BASIL K. PHILIP ,
SON OF PHILIP , KOTTICKAL HOUSE ,
PADIKKAPPU KARA , MANNAMKANDAM VILLAGE ,
DEVIKULAM TALUK. PIN 685 561.
- 6 FR. BIBIN C.U. ,
SON OF ULAHANNAN ,
CHERUKUNNEL HOUSE ,
THEKKENMARADY KARA , MARADY VILLAGE ,
MUVATTUPUZHA TALUK. PIN 686 673.
- 7 SALIM CHERIAN ,
SON OF CHERIAN , MALIYIL HOUSE ,
ILAVANADU KARA ,
KOTHAMANGALAM- 686 691.

R1 BY ADVS.SRI.S.SREEKUMAR (SENIOR ADVOCATE)
SRI.ROSHEN D.ALEXANDER
R7 BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 04.12.2018, THE
COURT ON 18.12.2018 DELIVERED THE FOLLOWING:

C.R.

A.HARIPRASAD, J.

O.P.(C) No.3147 of 2018

Dated this the 18th day of December, 2018

JUDGMENT

This original petition under Article 227 of the Constitution of India is filed by the 8th defendant in O.S.No.162 of 2018 before the Munsiff's Court, Muvattupuzha, challenging Ext.P7 order passed by the learned Munsiff on I.A.No.2738 of 2018. As per the above application, enforcement of an order of temporary injunction passed on I.A.No.830 of 2018 in the above suit is sought by providing police protection to the plaintiff/1st respondent.

2. 1st respondent is the plaintiff and the respondents 2 to 7 are the defendants 2 to 7 in the above suit. It is the case of the plaintiff that he is the vicar of the 1st defendant church appointed on 16.08.2017 by the Metropolitan of Angamali Diocese of Malankara Orthodox Syrian Church (in short, Malankara Church). 1st defendant church, viz., Marthomman Cheriya Palli, Kothamangalam is a constituent parish church of Malankara Church. The church is to be governed by 1934 constitution of Malankara Church. It is the case of the plaintiff that Malankara

Churches follow Orthodox Syrian faith from the time of its establishment. Malankara Church was accepting the spiritual leadership of the Catholicos of East. In 1972, the relationship between the Patriarch of Antioch and the Catholicos was strained. Thereafter slew of litigations were fought between the two rival groups in the Malankara Church. The decrees passed by this Court in O.S.No.1 of 1979 and other cases were taken to the Supreme Court and finally in 1995, the Supreme Court decided the cases declaring the law binding on the parish churches in the fold of Malankara Church. Plaintiff contended that recently also the Supreme Court re-affirmed the judgment rendered by it in the year 1995.

3. Defendants 2 to 9 are members of Jacobite faction in the Malankara Church and they functioned under a constitution called "Jacobite Syrian Christian Sabha, 2002". They are not appointed as per 1934 constitution and they have no right to act as vicars and assistant vicars of the 1st defendant church. Therefore, the plaintiff sought for the following reliefs against defendants:

"a. Restraining the defendants 2 to 9 and their men or agents from causing obstruction to the plaintiff in discharging duties of parish priest of the 1st defendant-church including conducting Holy Mass and discharging all other religious functions of the 1st defendant-church and its kurisadies cemetery, etc, situated in the plaint schedule properties and restraining the defendants 2 to 6 from acting as the vicar or as the assistant vicars of the 1st defendant-church and restraining the defendants 2 to 9 from bringing Metropolitans and Priests belonging to Patriarch faction in violation of 1934 Constitution in the 1st defendant-

church.

d. Allowing cost of this suit to the plaintiff; and

e. Granting such other relief which are deemed fit and proper in the interest of justice and which may prayed for here after.”

4. Along with the suit, an application for temporary injunction was also filed as I.A.No.830 of 2018 before the court below seeking the following reliefs:

“For the reasons stated in the accompanying affidavit it is humbly prayed that this Hon’ble court may be pleased to pass an order of temporary injunction restraining the defendants 2 to 9 and their men or agents from causing obstruction to the plaintiff in discharging duties of parish priest of the 1st defendant-church including conducting Holy Mass and discharging all other religious functions of the 1st defendant-church and its kurisadies, cemetery, etc, situated in the plaint schedule properties and restraining the defendants 2 to 6 from acting as the vicar or the assistant vicars of the 1st defendant-church and restraining the defendants 2 to 9 from bringing Metropolitans and Priests belonging to Patriarch faction in violation of 1934 Constitution in the 1st defendant-church, till the disposal of the suit.”

In that matter, the court below passed the following order:

“In the result, this petition is allowed in the following terms :

1. Defendants 2 to 9/Respondents their men and agents are restrained by an order of temporary prohibitory injunction from causing any obstruction to the plaintiff in discharging the duties of the parish

priest of the first defendant church including conducting of holy mass and other religious functions of the first defendant in its Kurishadi, Cemetery etc and defendants 2 to 6/respondents 1 to 5 from acting as Vicars/Assistant Vicars of the first defendant church and from doing any acts as the Vicars/Assistant Vicars of first defendant church till the disposal of the suit.

2. *Petitioner is also entitled to realise costs of the petition from the respondents.”*

5. The matter was taken up in appeal by the defendants 2 to 8 before the Court of Subordinate Judge, Muvattupuzha in C.M.A.No.19 of 2018. After considering merits of the contentions, the appeal was dismissed by the learned Sub Judge confirming the order passed by the trial court. The order of temporary injunction granted by the trial court is challenged in pending O.P.(C) No.2333 of 2018 by some of the defendants in the suit.

6. In I.A.No.2738 of 2018, the plaintiff/1st respondent contended that in O.P.(C) No.2333 of 2018, this Court on 18.09.2018 directed the parties to maintain status quo as ordered in terms of the interim order passed in C.M.A.No.19 of 2018. Thereafter, on 24.09.2010, after hearing the parties, this Court refused to extend the interim order to maintain status quo. It resulted in the resurrection of the temporary injunction order. It was alleged before the trial court that in flagrant violation of the order passed on the temporary injunction application, the respondents in the application acted as vicars and assistant vicars and they conducted religious ceremonies in the 1st defendant church. On 18.09.2018, the 1st

respondent came to know that the respondents 2 to 8 colluded together and published a notice on 17.09.2018 about conducting a festival in the 1st defendant church from 25.09.2018 to 04.10.2018. It is alleged by the 1st respondent that the defendants did not mention name of the vicar in the notice. It was published that the defendants 2 to 8, their bishops and priests, who are not appointed as per 1934 constitution, would conduct the religious ceremonies. Defendants 2 to 8 intended to conduct religious ceremonies in violation of the temporary injunction order passed on I.A.No.830 of 2018 and to cause obstructions to the 1st respondent in conducting the religious ceremonies in the 1st defendant church during the festival days. As per 1934 constitution, the plaintiff alone has a right to conduct religious ceremonies, including the festival in the 1st defendant church. Plaintiff apprehended that the defendants 2 to 8 would continue to act in violation of the injunction order as they were bent upon causing obstructions to the plaintiff performing the ceremonies in the 1st defendant church. It could lead to law and order problems in the 1st defendant church and its premises. Therefore, he sought for the help of the Deputy Superintendent of Police, Muvattupuzha for implementing the order of injunction in this matter.

7. The contesting defendants filed a counter affidavit in the application contending that the 1st respondent/plaintiff has no role in the 1st defendant church. The order of temporary injunction has not become final and it is pending in O.P.(C) No.2333 of 2018 before this Court. The famous “kanni 20” feast in the 1st defendant church was scheduled to be conducted from 25.09.2018 to 04.10.2018 and it was the 333rd death anniversary of St.Mar Baselious Eldo Bawa. This festival is

conducted by the entire people in the locality for more than three centuries without any obstruction. It is also contended that the defendants did not violate any order of the court and never threatened the plaintiff as alleged. All the defendants separately filed counter affidavits opposing the claim for enforcing the temporary injunction order through police.

8. Heard the learned senior counsel for the petitioner and the learned senior counsel appearing for the 1st respondent. Learned counsel appearing for the 7th respondent is also heard.

9. Trial court, after considering the rival contentions and relying on certain decisions on the point, found that the Station House Officer, Kothamangalam Police Station on flimsy and unconvincing reasons failed to render police protection to the 1st respondent/plaintiff stating that his entry in the 1st defendant church could lead to a breach of law and order in the area. The trial Judge in strong words criticized the attitude of the police and held that the respondents 2 to 8 are bound to obey the orders of the court and since they contumaciously defied the prohibitory orders, it has to be enforced by rendering police protection.

10. Learned senior counsel appearing for the petitioner herein, who is the 7th respondent in I.A.No.2738 of 2018, contended that the court below erred seriously in granting an order of police protection flouting the precedents on the point and that too on a mere asking. According to him, the essential aspects which are to be borne-in-mind for granting police protection are not considered by the court below. In order to buttress this contention, learned senior counsel relied on certain precedents.

11. Placing reliance on **Mammoo v. Krishnan (1978 KLT 901)**, learned senior counsel for the petitioner contended that the impugned order is unsustainable. In paragraph 4, the following observations are made by the learned single Judge in the above decision:

“The very foundation of the jurisdiction of the court to requisition police aid in order to discharge its function of giving effect to its decision being its inherent powers to which it can have resort only for the purpose of meeting ends of justice and to prevent abuse of process of court, the court can exercise this power only when it is ‘absolutely necessary’, and, note ‘no party has a right to insist the court to exercise it.’ Manoharlal v. Seth Haralal (AIR. 1962 SC. 527). In other words, decree holder cannot as of right claim police aid, nor shall the court requisition the same as a matter of course. The court, on a consideration of all the circumstances of the case and after giving due weight to all aspects, should be satisfied that it is absolutely necessary to requisition police aid in order to avert miscarriage or failure of justice or to prevent abuse of process of court.”

Although the facts in both the cases are different, the principles quoted above are relevant.

12. No authority is required to observe that the power to order police protection emanate from Section 151 of the Code of Civil Procedure, 1908 (in short, CPC).

13. Next decision relied on by the learned senior counsel for the petitioner

is **Abdul Rahim v. Nazarullah (1998 (2) KLJ 643)**. That was a case where a temporary injunction order was sought to be enforced through police. After scanning the decisions on the point, a learned single Judge set aside the order granting police protection by the trial court on finding that the court did not grant time to the opposite party to file their objection before granting the order. It was also found that it is not justifiable on the part of the court below to direct police aid in order to put up boundaries to properties pending the suit.

14. Another learned single Judge in **V.S.Ayyappan v. Fr. Thomas Viruthiyil (1989 (2) KLJ 343)** relying on the decision in **State of Bihar v. Sonabati Kumari (AIR 1961 SC 221)** held that application under Order XXXIX Rule 2A and Order XXI Rule 32 CPC have a punitive aspect. This decision is cited to impress upon that another application filed by the 1st respondent invoking Order XXXIX Rule 2A CPC was adjourned by the trial court without considering the merits of the petition along with this application. I shall deal with this contention in the succeeding paragraphs.

15. **State of Bihar v. Sonabati Kumari** (supra) is a constitution bench decision rendered after considering all the aspects on disobedience of an order of temporary injunction and the liability to proceed in contempt. In paragraph 23, the following observations are made:

“Learned Counsel laid considerable stress on the proceedings under O.39, R.2(3) being quasi-criminal, in an attempt to establish that the State could not be proceeded against for such a criminal wrong. Though undoubtedly proceedings under O.39, R.2(3) Civil Procedure

Code have a punitive aspect-as is evident from the contemner being liable to be ordered to be detained in civil prison, they are in substance designed to effect the enforcement of or to execute the order. This is clearly brought out by their identity with the procedure prescribed by the Civil Procedure Code for the execution of a decree for a permanent injunction. Order 21, R.32 sets out the method by which such decrees could be executed-and Cl.(1) enacts-"where the party against whom a decree..... for an injunction has been passed, has had an opportunity for obeying the decree and has wilfully failed to obey it, the decree may be enforced, in the case of a decree for an injunction by his detention in the civil prison, or by the attachment of his property or by both." Clauses 2 and 3 of this rule practically reproduce the terms of Cls.4 & 3 respectively of O.39, R.2, and the provisions leave no room for doubt that O.39, R.2(3) is in essence only the mode for the enforcement or effectuation of an order of injunction. While on the provisions of O.21, R.32, it may be pointed out that learned Counsel for the State does not contend that a State Government against whom a decree for a permanent injunction has been passed is not liable to be proceeded against under this provision of the Code in the event of the decree not being obeyed by them. No doubt the State Government not being a natural person could not be ordered to be detained in civil prison, on the analogy of Corporations for which special provision is made in O.39, R.5, but beyond that, both when a decree for a

permanent injunction is executed and when an order of temporary injunction is enforced the liability of the State Government to be proceeded against appears to us clear. The third point urged lacks substance and is rejected.”

16. A single Judge in **Kochupennu Anbujakshi v. Velutha Kunju (1992 (2) KLJ 606)**, after considering various decisions touching on the enforcement of orders passed by courts through police, held that only a final order passed under Rule 1 or Rule 2 of Order XXXIX CPC can be enforced with the assistance of police. Here such an order is sought to be enforced is undisputed.

17. It is argued by the learned senior counsel for the petitioner that the court below had no material before it to find that the respondents in I.A.No.2738 of 2018 prevented the 1st respondent herein (plaintiff) from entering the church. It is also contended that the court below issued a commission by passing Ext.P6 order and it was intended only to see whether the temporary injunction order was violated. Prayer in the application is to appoint a commissioner to oversee whether any violation of the order was taking place in the 1st defendant church during the annual feast. Repelling the contentions of the petitioner herein and other respondents before the court below the application was allowed. The commissioner's report was relied on by the trial Judge to find that the 1st respondent/plaintiff was prevented from entering the church and performing his duties. Argument raised on behalf of the petitioner that the commissioner's report should not have been taken into consideration for deciding the present application as it was obtained for the specific purpose of deciding the question of violation of

injunction order cannot hold good. It is indisputable that the commissioner's report forms part of the record in the case. Trial court has every right to look into the materials in the record to decide the disputes. Commissioner's report cannot be excluded from consideration in this matter.

18. Learned senior counsel appearing for the 1st respondent/plaintiff contended that on a perusal of the impugned order, it will be clear that the trial Judge has considered the scope of the petitions and the materials placed before the court to find that the defendants were obstructing the plaintiff from performing his duties as vicar in-charge. It is seen from the impugned order that Ext.A14 is the notice issued by the Station House Officer, Kothamangalam Police Station purportedly invoking Sections 39 and 63 of the Kerala Police Act, 2011. Section 39 of the Kerala Police Act reads as follows:

“39. Lawful directions of police to be complied with.- (1) All persons shall comply with the lawful directions given by a Police Officer for the discharge of his functions under the Act.

(2) For ensuring the compliance of any lawful direction during the discharge of any lawful duty conferred on any Police Officer under this Act or any rule, regulation or order made thereunder, a Police Officer may,-

(a) warn a person, who is about to commit an offence punishable under any law or any rule or order made under any law, for preventing the same;

(b) require any person to comply with any law which specifies the

manner in which such person shall act on his own matter or in the matter of another person or on any matter under his charge;

(c) subject to the provisions of clauses (a) and (b), a police officer may arrest any person who is committing an offence or has committed an offence in his presence if such arrest is considered lawfully necessary;

(d) seize any articles which is used or about to be used for committing the offence;

(e) seize any article relating to which an offence has been committed, if such seizure of that article is necessary for preventing such offence or for investigating such offence.”

On a perusal of the above provision of law, it can be seen that the Station House Officer has either completely misunderstood its scope or feigned ignorance of the object of the provision. It enjoins him to enforce the law against a violator. It cannot be used to deter a person complaining about disobedience of a lawful order of temporary injunction passed by a competent court. In fact none of the aspects in Section 39 of the Kerala Police Act empowered him to issue a notice like Ext.A14.

19. Another provision quoted by the Station House Officer is Section 63 of the Kerala Police Act. It reads as follows:

“63. Police action in disputes which may lead to cognizable offence.- *If anyone brings to notice of the circumstance of a dispute between any individuals or groups which if not resolved at the earliest is likely to culminate into a cognizable offence, the Station House Officer shall take steps,-*

(a) to ascertain the facts and circumstances of the matter by interacting with the individuals concerned or to others acquainted with such facts;

or

(b) to give warning in writing to any individuals or all groups involved in the dispute against the doing of any unlawful act in continuation of the dispute; or

(c) to encourage individuals or groups involved in the dispute to redress the dispute through mutual discussion or through mediation; or

(d) to advise individuals or groups to approach the Competent Court having jurisdiction for redressing the dispute; or

(e) to require the individuals or groups to seek redressal of the dispute by appearing before an Executive Magistrate having jurisdiction; or

(f) to report facts before the Magistrate having jurisdiction for taking suitable action against any individual or all groups under the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).”

This provision envisages situations arising out of property disputes or other disputes raised by individuals or groups. It is certainly inapplicable to a case where one party armed with an order of a competent court approaches the police for its enforcement. In fact, it is evident that the police officers not only failed in their duty or derelicted their duty, but prevented a rightful person from enforcing his legal right recognized by a court.

20. Learned senior counsel for the 1st respondent/plaintiff relying on **Mohammad v. Mohammed Haji (1986 KLT 134)** contended that though action can

be taken by a court for violation of injunction under Order XXXIX Rule 2A CPC, that does not end there as it is open to the court to implement its order by exercising its inherent powers under Section 151 CPC.

21. Another decision relied on by the learned senior counsel for the 1st respondent is **Delhi Development Authority v. Skipper Construction Co.(P) Ltd. and another ((1996) 4 SCC 622)**. The law declared therein reads as follows:

“The contemner should not be allowed to enjoy or retain the fruits of his contempt.

17. The principle that a contemner ought not to be permitted to enjoy and/or keep the fruits of his contempt is well settled. In Mohd.Idris v. Rustam Jehangir Babuji ((1984) 4 SCC 216:1984 SCC (Cri) 587: (1985) 1 SCR 598) this Court held clearly that undergoing the punishment for contempt does not mean that the court is not entitled to give appropriate directions for remedying and rectifying the things done in violation of its orders. The petitioners therein had given an undertaking to the Bombay High Court. They acted in breach of it. A learned Single Judge held them guilty of contempt and imposed a sentence of one month's imprisonment. In addition thereto, the learned Single Judge made appropriate directions to remedy the breach of undertaking. It was contended before this Court that the learned Judge was not justified in giving the aforesaid directions in addition to punishing the petitioners for contempt of court. The argument was rejected holding that “the Single Judge was quite right in giving

appropriate directions to close the breach (of undertaking).”

18. *The above principle has been applied even in the case of violation of orders of injunction issued by civil courts. In Clarke v. Chadburn ((1985) 1 All ER 211) Sir Robert Megarry V-C observed :*

“ I need not cite authority for the proposition that it is of high importance that orders of the court should be obeyed. Wilful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal. If by such disobedience the persons enjoined claim that they have validly effected some change in the rights and liabilities of others, I cannot see why it should be said that although they are liable to penalties for contempt of court for doing what they did, nevertheless those acts were validly done. Of course, if an act is done, it is not undone merely by pointing out that it was done in breach of the law. If a meeting is held in breach of an injunction, it cannot be said that the meeting has not been held. But the legal consequences of what has been done in breach of the law may plainly be very much affected by the illegality. It seems to me on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them.”

19. *To the same effect are the decisions of the Madras and Calcutta High Courts in Century Flour Mills Ltd. v. S.Suppiah (AIR 1975 Mad 270 : (1975) 2 MLJ 54) and Sujit Pal v. Prabir Kumar Sun (AIR 1986*

Cal 220 : (1986) 90 CWN 342). In Century Flour Mills Ltd., it was held by a Full Bench of the Madras High Court that where an act is done in violation of an order of stay or injunction, it is the duty of the court, as a policy, to set the wrong right and not allow the perpetuation of the wrongdoing. The inherent power of the court, it was held, is not only available in such a case, but it is bound to exercise it to undo the wrong in the interest of justice. That was a case where a meeting was held contrary to an order of injunction. The Court refused to recognise that the holding of the meeting is a legal one. It put back the parties in the same position as they stood immediately prior to the service of the interim order.

20. In Sujit Pal a Division Bench of the Calcutta High Court has taken the same view. There, the defendant forcibly dispossessed the plaintiff in violation of the order of injunction and took possession of the property. The Court directed the restoration of possession to the plaintiff with the aid of police. The Court observed that no technicality can prevent the court from doing justice in exercise of its inherent powers. It held that the object of Rule 2-A of Order 39 will be fulfilled only where such mandatory direction is given for restoration of possession to the aggrieved party. This was necessary, it observed, to prevent the abuse of process of law.”

22. In Meera Chauhan v. Harsh Bishnoi and others ((2007) 12 SCC 201)

the Supreme Court observed thus:

“At the same time, it is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.”

23. Recently a division bench of this Court in **Shaji M.K. and another v. State of Kerala and others (2018 (3) KHC 69)** has considered how to tackle disobedience and breach of interim orders in the following words:

“15. Therefore, where there is disobedience or breach of an order of temporary injunction passed by the Civil Court under Order XXXIX, R.1 of the Code of Civil Procedure, the remedy open to the plaintiff/applicant is either to apply that Court under Order XXXIX, R.2A of the Code seeking an order to attach the property of the person guilty of such disobedience or breach and for an order to detain such person in civil prison for a term not exceeding three months. In appropriate cases, the plaintiff/applicant can invoke the inherent powers of the Civil Court under S.151 of the Code, which includes the power to grant police protection to secure compliance of the order of temporary injunction. When there are adequate provisions under the Code which enables the Civil Court to enforce and implement its orders, the

plaintiff/applicant cannot approach this Court under Art.226 of the Constitution of India seeking police protection to secure compliance of the order of temporary injunction.

16. *In the instant case, the averments in Exts.P3 and P5 complaints made by the 2nd petitioner before the 3rd and 4th respondents would make it explicitly clear that, alleging breach of Ext.P2 order of temporary injunction by respondents 5 to 8 herein, their men and agents, the petitioners are seeking police protection, in order to bring construction materials to their property through plaint D schedule property and for enjoying the said pathway in terms of Ext.P2 order of temporary injunction. If there is any disobedience or breach of Ext.P2 order of temporary injunction, the remedy open to the 1st petitioner who is the plaintiff in O.S.No.1241 of 2016 on the file of the Principal Munsiff's Court, Ernakulam, is either to apply that Court under Order XXXIX, R.2A of the Code against the person or persons guilty of such disobedience or breach, or to invoke the inherent powers of that Court under S.151 of the Code, which includes the power to grant police protection, in appropriate cases, to secure compliance of the order of temporary injunction."*

24. The law on the point is very clear that an order of injunction, if violated, can be enforced by taking punitive action against the contemnor under Order XXXIX Rule 2A CPC as well as by enforcement of the order with the aid of police by invoking Section 151 CPC.

25. The argument advanced on the side of the petitioner that the commissioner's report would show that the 1st respondent did not go to the church on 02.10.2018 and 03.10.2018 on his own and nobody prevented him cannot be accepted for the reason that he had approached the police for help anticipating violence and personal hurt. For utterly unlawful and unreasonable reasons, the Station House Officer and the Deputy Superintendent of Police, Muvattupuzha failed, rather refused, to afford protection to the petitioner. On no count, their conduct can be approved. In fact, as observed by the trial Judge, it is contumacious and may even amount to contempt of court.

26. Learned senior counsel for the 1st respondent relying on the Supreme Court decisions in **K.S.Varghese and others v. Saint Peter's and Saint Paul's Syrian Orthodox Church and others (2017 (3) KLT 261)** and **Mathews Mar Koorilos v. Pappy (2018 (3) KLT 990)** contended that the 1st defendant church indisputably falls within the domain of Malankara Church to be administered under 1934 constitution. It is also argued that the defendants in the suit have no case that they owe allegiance to 1934 Malankara Church constitution. It is therefore argued that they cannot have any sort of right in the 1st defendant church on account of the binding pronouncements by the Supreme Court. Learned senior counsel reiterated that the 1st defendant church is one of the churches included in the suit, which was decided by the Supreme Court in **P.M.A.Metropolitan v. Moran Mar Marthoma (AIR 1995 SC 2001)**. When the issues, once settled in **P.M.A.Metropolitan's** case, were again raked up in **K.S.Varghese's** case, a two Judge bench affirmatively held thus:

“228. Resultantly, based on the aforesaid findings in the judgment, our main conclusions, inter alia, are as follows :

228.1. 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.

228.2. The decree in the Most Rev.P.M.A Metropolitan v. Moran Mar Marthoma (1995(2) KLT SN 28 (C.No.37) SC = 1995 Supp.(4) SCC 286) is completely in tune with the judgment. There is no conflict between the judgment and the decree.

228.3. The Most Rev.P.M.A Metropolitan v. Moran Mar Marthoma (1995(2) KLT SN 28 (C.No.37) SC = 1995 Supp.(4) SCC 286) 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 the provisions of Order 1 Rule 8 and Explanation 6 to S.11 C.P.C. 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.

228.4. 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.

XXXXXXXXXX

228.20. 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 ground 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 bye-laws in violation of the provisions of the 1934 Constitution.

XXXXXXX

228.24. The formation of the 2002 Constitution is the result of illegal and void exercise. It cannot be recognised 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.

XXXXXXXXXX

228.27. 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 patronising parallel systems of administration.”

These aspects, along with other relevant aspects, have been reaffirmed by a three Judge bench of the Supreme Court in **Mathews Mar Koorilos** (supra). In the light of the principles enunciated by the Supreme Court, it is not open to any court in this country to take a different view. Therefore, the temporary injunction order now sought to be enforced through police aid has to be enforced with full vigour unless and until the temporary injunction order is vacated or modified by this Court in the pending original petition.

27. Regarding the non-hearing of a petition filed by the 1st respondent under Order XXXIX Rule 2A CPC, it is to be observed that mere violation of injunction order may not be sufficient to punish a person by invoking the above provision and it must be established that he knowingly and contumaciously violated the injunction order. A decision therefore can be taken only after making an elaborate enquiry. Therefore, the trial court cannot be blamed for not considering the application under Order XXXIX Rule 2A CPC along with this petition.

28. Yet another contention raised by the petitioner that no police aid is required as there was no obstruction caused by the defendants to the plaintiff's functioning cannot be countenanced for the reason that the defence plea taken up by them is a total denial of the plaintiff's rights.

29. As observed earlier, I find no illegality or impropriety in the order passed by the court below directing the police to render sufficient help to the 1st

respondent. In fact, in the well written order the trial court has considered the aspects properly. Illegality and impropriety is entirely on the part of the police in refusing to render necessary help.

30. Learned senior counsel appearing for the 1st respondent (plaintiff) contended that the police department cannot be selective in enforcing the orders passed by courts. A serious complaint is raised that they adopt different postures and stances in implementing the court orders. I emphatically state that no discretion is vested in any of officers of police department, however high he may be, to decide as to which court order shall be enforced and which shall not be. A lawful order passed by a competent court, whether it be by a court of lowest jurisdiction or the highest court in the land, the police is bound to enforce it in accordance with law. Police has no right or authority to sit in appeal on the orders passed by the courts and examine its correctness. It can be decided only by higher courts in the hierarchy. State administration also has a non-negotiable constitutional responsibility to maintain majesty of the rule of law. The police department, being a limb of the State administration, is also duty bound to enforce the rule of law. The police officers concerned by citing some irrelevant provisions from the Kerala Police Act, 2011 cannot extricate themselves from the duty and responsibility of enforcing the court's order. Legal rights of citizens cannot be decided merely by looking into the Kerala Police Act, 2011. Apart from the Kerala Police Act, there are other central statutes like Indian Penal Code, Code of Criminal Procedure, etc. whereunder the police is obliged to act under such situations.

For the said reasons, I find no merit in the challenge raised in the

original petition. Hence it is dismissed affirming the trial court's order. The police officers concerned shall enforce the order in letter and spirit forthwith.

**A.HARIPRASAD,
JUDGE.**

cks

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 COPY OF ORDER DATED 21.07.2018 IN IA NO.830/2018 IN OS 162/2018 OF MUNSIF'S COURT, MUVATTUPUZHA

EXT.P2 COPY OF THE PETITION IA 2738/2018 IN OS 162/2018 OF MUNSIF'S COURT, MUVATTUPUZHA

EXT.P3 COPY OF THE PETITION IA 2739/2018 IN OS 162/2018 OF MUNSIF'S COURT, MUVATTUPUZHA

EXT.P4 COPY OF THE COUNTER AFFIDAVIT IN Ia 2738/2018 in os 162/2018 OF MUNSIF'S COURT, MUVATTUPUZHA

EXT.P5 COPY OF THE REPLY AFFIDAVIT IN I.A. 2738/2018 IN OS. 162/2018 OF MUNSIF'S COURT, MUVATTUPUZHA

EXT.P6 COPY OF THE ORDER DATED 1/10/2018 IN I.A. 2737/2018 IN OS. 162/2018 OF MUNSIF'S COURT, MUVATTUPUZHA

EXT.P7 COPY OF THE ORDER DATED 23.11.2018 IN IA NO.2738/2018 IN OS NO.162/2018 OF MUNSIF'S COURT, MUVATTUPUZHA

EXT.P8 COPY OF THE COMMISSION REPORT IN OS NO.162/2018 OF THE MUNSIF'S COURT, MUVATTUPUZHA

RESPONDENTS' EXHIBITS: NIL