

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

Friday, the 30th day of August 2024 / 8th Bhadra, 1946
CONTEMPT CASE(C) NO. 299 OF 2024(S) IN WP(C) 11996/2022

PETITIONERS/PETITIONERS:

1. ST. THOMAS ORTHODOX SYRIAN CHURCH, CHERUKUNNAM (CHERUKUNNAM CHURCH), ELAVAMPADAM P.O, ALATHUR,ALATHUR TALUK, PALAKKAD DISTRICT, REPRESENTED BY ITS VICAR FR. POLY VARGHESE, PIN - 678 684.
2. FR. POLY VARGHESE, VICAR, ST. MARYS ORTHODOX SYRIAN CHURCH, CHERUKUNNAM, AGED 54 YEARS, S/O. LATE VARGHESE, THELAPPILLIL HOUSE, SOUTH KORATTY P.O, THRISSUR, PIN - 680 308.

BY SRI. S. SREEKUMAR, SENIOR ADVOCATE ALONG WITH ADVOCATES M/S. ROSHEN.D.ALEXANDER, TINA ALEX THOMAS, HARIMOHAN & KOCHURANI JAMES

RESPONDENTS/CONTEMNORS:

1. DR. VENU. V IAS, PRESENTLY OFFICIATING AS THE CHIEF SECRETARY, STATE OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM., PIN - 695001
2. T. K JOSE IAS (*CORRECTED), PRESENTLY OFFICIATING AS THE ADDITIONAL CHIEF SECRETARY, HOME DEPARTMENT, DEPARTMENT OF HOME AFFAIRS, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001. *NAME OF THE RESPONDENT IS CORRECTED AS "BISHWANATH SINHA IAS" INSTEAD OF "T.K. JOSE IAS" AS PER ORDER DATED 1/2/2024 IN I.A 1/2024 IN COC 299/2024.
3. SHEIKH DARVESH SAHIB, PRESENTLY OFFICIATING AS THE THE DIRECTOR GENERAL OF POLICE AND STATE POLICE CHIEF, STATE OF KERALA, POLICE HEAD QUARTERS, THIRUVANANTHAPURAM, PIN - 695001
4. DR. S. CHITHRA IAS, PRESENTLY OFFICIATING AS THE THE DISTRICT COLLECTOR, COLLECTORATE, PALAKKAD, PIN - 678001
5. R. ANAND IPS, PRESENTLY OFFICIATING AS THE DISTRICT POLICE CHIEF, DISTRICT POLICE OFFICE, PALAKKAD, PIN - 678001
6. DR. AMRUTHAVALLI. P, PRESENTLY OFFICIATING AS THE SUB DIVISIONAL MAGISTRATE & REVENUE DIVISIONAL OFFICER, REVENUE DIVISIONAL OFFICE, OTTAPALAM, PALAKKAD, PIN - 679101
7. ASHOKAN. R, PRESENTLY OFFICIATING AS THE DEPUTY SUPERINTENDENT OF POLICE, ALATHUR, ALATHUR P.O, PALAKKAD, PIN - 678541
8. SHABEER. S, PRESENTLY OFFICIATING AS THE CIRCLE INSPECTOR OF POLICE, (SHO), MANGALAM DAM POLICE STATION, PALAKKAD, PIN - 678683
9. RAMANKUTTY. K, PRESENTLY OFFICIATING AS THE VILLAGE OFFICER, KIZHAKKENCHERY-II VILLAGE, PALAKKAD, PIN - 678541
10. FR. THOMAS PULAYATH, AGED 50 YEARS, S/O. KURIAN, PULAYATH HOUSE, AYAMPARA, KUNDUKAD P.O, THRISSUR, PIN - 680028
11. T. T. PATHROSE, AGED 55 YEARS, S/O. THOMAS, THADIKKULANGARAYIL HOUSE, KARINKAYAM P.O, PALAKKAD, PIN - 678706

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12. BAIJU K. K, AGED 40 YEARS, S/O. KURUVILA, KUZHIKATTIL HOUSE, MALLUCODE, ELAVAMPADAM P.O, PALAKKAD, PIN - 678684
13. JOY, AGED 61 YEARS, S/O. ULAHANNAN, APPATTUKUZHIIYIL HOUSE, ELAVAMPADAM P.O., KIZHAKENCHERY, PALAKKAD, PIN - 678684
14. K.C. PAULOSE, AGED 65 YEARS, S/O. CHACKO, KOLLARMALI HOUSE, ELAVAMPADAM P.O., KIZHAKENCHERY, PALAKKAD, PIN - 678684
15. N.M. MATHEW, AGED 75 YEARS, S/O. MATHAI, PUTHENPURA HOUSE, ELAVAMPADAM P.O., VAKKALA, PALAKKAD, PIN - 678706

SRI.ASOK M.CHERIAN, ADDITIONAL ADVOCATE GENERAL ALONG WITH GOVERNMENT PLEADER FOR R1 TO R9
SRI K. RAMAKUMAR (SENIOR ADVOCATE) ALONG WITH ADVOCATES M/S.
SREENATH VIJAYARAGHAVAN & P.VIJAYARAGHAVAN (PALAYIL) & P.V.ELIAS FOR R10 TO R14

This Contempt of court case (civil) having come up for orders on 30.08.2024, the court on the same day passed the following:

P.T.O.



V.G.ARUN, J

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Cont. Case(C) Nos.1761/2023, 1803/2023,1824/2023
299/2024, 329/2024 and 330/2024

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Dated this the 30th day of August, 2024

ORDER

By the direction in the judgments from which these Contempt of Court cases arise, the learned Single Judge had directed the official respondents to render necessary assistance to the petitioners to peacefully enter the churches and conduct religious services therein without let or hindrance from the party respondents. The official respondents instead of complying with the direction has offered an excuse that the attempt of the petitioners to enter the churches with police help is being thwarted by the party respondents, along with a posse of the faithful consisting of aged men, women and children. According to the official respondents, any attempt to remove the obstruction would lead to dangerous law and order problems and even loss of human lives. As it was evident that the police had

no specific plan of action, this Court on 08.07.2024 directed the police to device a definite strategy and act in accordance with the plan. Unfortunately that direction has also fallen on deaf ears.

2. Senior Adv. S. Sreekumar appearing for the petitioners, assisted by Advocate Roshan D Alexander, submitted that in situations like the present, where concerted efforts are taken to defeat the High Court's direction, the inherent power vested with this Court should be exercised and the contemners prevented from retaining the fruits of their contempt. With the support of the decisions of the Apex Court in **Delhi Development Authority v Skipper Construction Co. (P) Ltd** [(1996) 4 SCC 622] and that of the Calcutta High Court in **Derby Sales Pvt. Ltd and another v. Sanjay Mitra, Chief Secretary, Land & Land Reforms Department and others** [2017 SCC Online Cal 54], it is argued that, to uphold rule of law, the District Collectors should be directed to takeover possession of the churches. It is submitted that under similar circumstances, a learned Single Judge of this Court had passed an order in COC(C) No.777 of 2020 directing the District

Collector to takeover the church and the order was affirmed by the Division Bench in W.A.No.1046 of 2020.

3.Senior Advocate Adv.Naveen R Nath appearing for the party respondents in COC(C) No.1824 of 2023 contended that the court, in exercise of contempt jurisdiction, cannot grant overarching reliefs and it is not for the court to find out ways and means for enforcing its directions. Such course of action would be beyond the pale of contempt jurisdiction. Hence, in the absence of any direction in the Judgment to takeover the administration of the church, it would be inappropriate for this Court to issue any such direction in the contempt proceedings.

4. Senior Adv.K. Ramakumar appearing for some of the party respondents in COC(C) No.1761 of 2023 and 1803 of 2023, as instructed by Adv.Aswini Sankar R.S., put forth the following contentions:-

(i) The petitioners have not specified whether the respondents are guilty of civil contempt or criminal contempt.

(ii) The party respondents are unnecessarily made parties to the Contempt of Court case, without any specific instance of violation being pointed out against them.

(iii) The directions are based on the mistaken understanding of the judgment in **K. S. Varghese v. St.Peter's and Paul's Syrian Orthodox Church and others** [2017 (15) SCC 333]. The learned Single Judge is under the impression that in **K.S.Varghese** (supra), the court had directed to handover the possession of the church to the Orthodox faction. There being no such direction in that judgment, the very grant of police protection to enable the petitioners to enter the churches is rendered on a wrong premise.

(iv) Enforcement of the direction in the judgment is not a matter falling within contempt jurisdiction as held by the Supreme Court in **Kanwar Singh Saini v. High Court of Delhi** [(2012) 4 SCC 307] and by the Division Bench of this Court in **Subramanian C v.Nalini M** [2024 KHC Online 1270]

(v)As against the judgment in W.P.(C).No.25645 of 2019, from which COC(C) No.1761 of 2023 arises, the party respondents had filed W.A.No.913 of 2023 and the Division Bench by dismissing the appeal made clear that the impugned judgment would not stand in the way of the appellants availing any alternative remedy. Based on the clarification the

appellants have filed a civil suit and the same is pending.

5.Adv. Sajan Varghese appearing for the party respondents in COC(C) No. 330 of 2024 reiterated the contentions advanced by the Senior Counsel and cited the decisions in **Prithawi Nath Ram v. State of Jharkhand and others** [(2004) 7 SCC 261] and **Rajappan Nair v. Stephen Joseph** [2005 (2) KLT 345] to contend that in contempt jurisdiction the court need only examine whether the directions are complied with or not, and no positive direction for enforcement of the judgment can be issued.

6.Adv. Ashok M Cherian, the learned Additional Advocate General submitted that the official respondents cannot be held guilty of contempt, since sincere efforts had been taken to implement the direction in the judgment and the police was forced to withdraw in the wake of massive agitation at the Church premises by the Parishioners consisting of aged men, women and little children. Any use of force by the police would have led to bloodshed and loss of innocent lives. Therefore, a considered decision was taken to withdraw for the time being. The police will continue their attempt and are hopeful of

complying with the directions at a later point of time.

7. The other learned Counsel appearing for the party respondents also supported the arguments advanced by the Senior Counsel appearing on their side.

8. The contention that the averments in the contempt cases are vague cannot be countenanced, since the official respondents have clearly understood the directions, as is evident from the affidavits filed and the arguments advanced on their behalf. Having obstructed the feeble attempts at enforcement made by the police, the party respondents cannot **feign** ignorance of the directions. The argument that it is not discernible from the pleadings as to whether the petitioners are seeking action for criminal or civil contempt is liable to be rejected, the prayer being to punish the contemner for disobedience of the directions in the judgment. Disobedience of direction can give rise to civil contempt alone, as would be evident from a comparison of the definition of civil contempt as section 2(b) and criminal contempt as 2(c) of the Contempt of Courts Act, 1971. The argument that the directions were issued on a wrong understanding of the judgment in **K.S.Varghese**

(supra) cannot also be entertained, in view of the settled legal position that the court dealing with an application against alleged non-compliance with its earlier order cannot examine the rightness or wrongness of the order nor add or delete any direction [See **Prithawi Nath Ram's** case (supra)]. The contention that, based on the liberty granted by the Division Bench, a suit is filed before the civil court is no justification for disobeying or **stultifying** the directions issued by this Court.

9.This takes me to the primary contention that, in contempt jurisdiction, the court can only punish the contemner and cannot seek to enforce the directions earlier issued. Of course, the accepted position that in contempt case is that no positive direction beyond the jurisdiction of the contempt court should be given. The question here is whether the Court, before which the contempt proceedings are pending, should remain a mute spectator when the directions in the judgment are treated with scant respect and disobeyed with impudence. It needs no reiteration that disobedience of court orders strikes at the root of the rule of law on which the judicial system rests. If conduct which tends to bring the authority of the court and

the administration of law to disrepute is allowed to be perpetuated that will result in the entire system being maligned. It is the bounden duty of every court to uphold the majesty of law and maintain the purity of the system. The law is equally applicable to the mighty and the meek, the powerful and the powerless and has to be applied without fear or favour, prejudice or predilection. The Apex Court in **Delhi Development Authority's** case (supra) has reiterated the principle that a contemner should not be permitted to enjoy and/or keep the fruits of his contempt. As held in **Derby Sales Pvt. Ltd's** case (supra), the Court cannot and should not rest by passing a punitive order against the contemner. On the other hand, it is the duty of the court to see that its order is implemented and the contemner does not enjoy the benefits he has derived by violating the court's order. The above legal position is no longer *res integra* in view of the declaration of law by the Apex Court in **Subrata Roy Sahara v. Union of India and others** [(2014) 8 SCC 470]. Therein, the Apex Court after detailed examination of the power of superior courts, to enforce its directions, held as under:-

185.2. Disobedience of orders of a court strikes at the very root of the rule of law on which the judicial system rests. Judicial orders are bound to be obeyed at all costs. Howsoever grave the effect may be, is no answer for non-compliance with a judicial order. Judicial orders cannot be permitted to be circumvented. In exercise of the contempt jurisdiction, courts have the power to enforce compliance with judicial orders.

10. The decisions cited by the party respondents are cases in which the contempt courts had issued directions over and above those contained in the judgment. On the other hand, in the cases under consideration, the recalcitrant attitude of the official respondents and disregard of the directions by the party respondents leaves this Court with no option but to issue directions for preventing the contemptuous acts.

Accordingly, the following directions are issued:-

(i) The District Collector, Ernakulam is *suo motu* impleaded as the additional respondent in COC(C) No.1761 of 2023. The learned Government Pleader takes notice for the additional respondent.

(ii) The District Collector, Ernakulam shall takeover possession of the St.Mary's Orthodox Church, Odakkali, St.John's Besphage Orthodox Syrian Church, Pulinthanam and

COC(C).No.1761/2023 and con.cases.

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St.Thomas Orthodox Syrian Church, Mazhuvannoor.

(iii) The District Collector, Palakkad shall takeover possession of the St.Mary's Orthodox Church, Mangalam Dam, St.Mary's Orthodox Syrian Church, Erickinchira and St.Thomas Orthodox Syrian Church, Cherukunnam.

(iv) The District Collectors shall file reports regarding takeover before this Court by the next posting date.

(v) The District Police Chiefs, Ernakulam and Palakkad shall deploy sufficient police personnel to aid the District Collectors.

Post on 30.09.2024.



sd/-

V.G.ARUN, JUDGE

sj