

**ASHOK BHUSHAN, CJ**

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**A.M.SHAFFIQUE, J.**

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W.P.C.No.25413 of 2013

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Dated this the 8<sup>th</sup> day of February 2016

**J U D G M E N T**

**Shaffique,J**

This writ petition has been filed by the petitioners seeking police protection.

2. Petitioners claim to be parishioners attached to St.Peters and St.Pauls Orthodox Syrian Church, Kolencherry. According to them, the 4<sup>th</sup> respondent, the Vicar, has been permitted to conduct the services in the said church which is now being objected by respondents 5 to 9 and their men. According to the petitioners, though there was a suit filed before the District Court, Ernakulam being O.S.No.43/2007 by respondents 5 to 7, seeking for a declaration that the church and the educational institutions of St.Peters and St.Pauls Orthodox Syrian church are to be administered only in terms with the 'udampadi' No.13/12/1088 M.E, the suit has been dismissed and the said judgment has been confirmed in appeal as per the judgment of this Court dated 04/10/2013 in R.F.A.No.655/2011. It is submitted that the issues between the two rival factions, who were staking claim for administering the church had been settled by the decision of the Apex

Court in **P.M.A.Metropolitan's** case [AIR 1995 SC 2001] and **Moran Mar Baselious Marthoma Mathews II v. State of Kerala** [2003(1) KLT 780] and the earlier judgment in connection with the same.

3. According to the petitioners, the judgments clearly indicate that 1934 constitution is valid and has to be accepted by the parish church. Therefore, according to the petitioners, the contention urged on behalf of the respondents 5 to 7 have already been settled. Though Special Leave Petitions have been filed before the Supreme Court challenging the judgment in R.F.A.Nos.589/11 and 655/2011, no interim orders have been passed and therefore the status, as on date, is that the 4<sup>th</sup> respondent is entitled to carry on with the conduct of services in the church.

4. It is submitted that the private respondents have been creating obstruction in opening the church and it is remaining closed. Petitioners submit that attempts are being made by respondents 5 to 9 to prevent the conduct of services in the church and though some police officers have come to the site, they did not provide necessary protection for conducting the services.

5. Learned counsel appearing on behalf of the 4<sup>th</sup> respondent submits that the Vicar has made all arrangements for conducting services, but it is only on account of the obstructing tactics adopted by

the respondents 5 to 9 and their men that the services could not be held. It is also submitted that the Vicar has not prevented any parishioner to come to the church or even any member who has faith in the religion to come and participate in the services being conducted; but they have to come to the church and participate in the services peacefully and shall not create any obstruction.

6. Counter affidavit has been filed by respondents 5 to 7 inter alia stating that the judgment in R.F.A.Nos.589/2011 & 655/2011 has been taken up before the Supreme Court and the matter is listed for hearing. It is stated that there is no necessity for police interference in the matter. That apart, it is submitted that the manner in which the 4<sup>th</sup> respondent have obtained the keys and their right to conduct service is already under challenge in the matter pending before the Supreme Court . It is also contended that both the factions are conducting their own services in different areas and therefore right now, until the Supreme Court takes a decision in the matter, there is no necessity for the 4<sup>th</sup> respondent to conduct services in the said Church.

7. The learned Government Pleader, on instructions, would submit that police is ready and willing to provide necessary protection. But, if there is any obstruction caused inside the church, police may find it difficult to remove the obstructors.

8. Having heard the learned counsel on either side and having perused the records, we are of the view that when a Civil Court has already decided the right of the 4<sup>th</sup> respondent to conduct services in the church, all the parties are bound by the same and respondents 5 to 9 or their men cannot obstruct any such activities. If there is any such obstruction from the side of respondents 5 to 9 or their men, it is for respondents 2 and 3 to interfere in the matter and take necessary steps. It is made clear that all the members of the parish or any person who has faith in the services being conducted, are entitled to enter into the church and participate in the prayer peacefully. However, no such person shall be entitled to create any obstruction in the services being conducted by the Vicar. If any such obstruction is created within the premises of the church or inside the church, at the instance of the Vicar, it shall always be open for respondents 2 and 3 to take appropriate action, in accordance with law in order to enable peaceful conduct of the services.

Under such circumstances, this writ petition is disposed of as under:

i) 4<sup>th</sup> respondent is entitled to conduct services in St.Peters and St.Pauls Orthodox Syrian Church, Kolencherry and no obstruction shall be created by respondents 5 to 9 or their men.

ii) If any such obstruction is created by respondents 5 to 9 or their men in the matter relating to conduct of services by the 4<sup>th</sup> respondent, on the request of the 4<sup>th</sup> respondent, respondents 2 and 3 shall interfere in the matter and remove any such obstruction and also ensure maintenance of law and order.

iii) This judgment, however, will be subject to any decision that might be taken by the Supreme Court in the pending matters or by any Civil Court, as the case may be.

(sd/-)  
**(ASHOK BHUSHAN, CHIEF JUSTICE)**  
(sd/-)  
**(A.M.SHAFFIQUE, JUDGE)**

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PA to Judge

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