

In the Court of the District Judge, Ernakulam

Present:

Sri. A. Hariprasad, I Addl. District Judge
Wednesday 22nd August 2001/31st Sravana 1923

I.A.No. 2099/2001

in

I.A.No. 1569/1998

in

O.S.No. 31/1998

Petitioners/Petitioners/Plaintiffs

1. N.U. John
Njattuthottiyil, Koloncherry
Akkaranadu South village,
Kunnathunadu Taluk
2. P.P. Thomas,
Pookolayil House,
Koloncherry,
Akkaranadu South village,
Kunnathunadu taluk.

By Adv. Biju Abraham

Respondent/Respondent/De fendant

Fr. E.P. Zacharia,
Echikkottil House,
Thiruvankulam,
Kanayannur Taluk

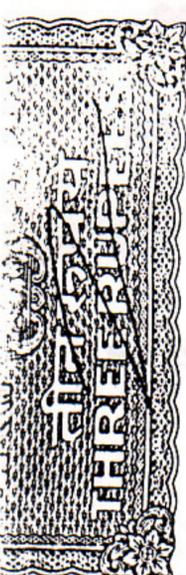
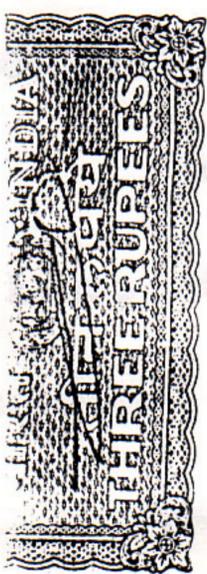
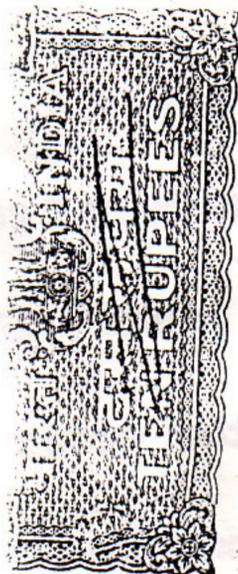
By Adv. P.J. Philip *N. Sakumaran*

Petition filed under Section 151 of the C.P.C.
praying this court to direct the Circle Inspector of Police
Puthencruz to grant adequate and effective police protection
for the enforcement of the injunction order and give necessary
protection for the day to day affairs of the church.

This petition having been finally heard on 10.8.2001
in the presence of the above advocates concerned and having
stood over for consideration to this day, the court passed
the following:

Order

Petition to give direction to the police to enforce
the temporary injunction order passed by this court and
confirmed by all the superior courts against the respondent.



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2. Brief pleadings are as follows:-

As per order on I.A.156^g/98 dt. 21.12.98 this court passed a temporary injunction order against the respondent from entering into the plaint church and functioning as a priest in the church. It is contended by the petitioner that the order of this court was unsuccessfully challenged before Hon'ble High Court in CMA.345/1998. The CMA was dismissed on 23.1.2000. It is further alleged by the petitioner that though the respondent took the matter upto Hon'ble Supreme Court, he could not get any favourable orders. At present, there is a temporary injunction in force against the respondent which has been confirmed by the superior courts. It is alleged that the respondent is not ready to obey the same. Respondent with the help of some outside supporters is trying to violate the injunction order by creating physical violence and assaults against the devotees and office bearers of the church. According to the petitioner, the respondent wanted to create a situation adversely affecting the peace and tranquility in the area, so that the authorities will be forced to initiate proceedings under section 144 Cr.P.C. Petitioner contended that earlier attempts of the respondent resulted in imposing orders under Section 144 Cr.P.C. Petitioner and office bearers

of the church though could physically resist the illegal activities of the respondent, desist from doing so as law abiding citizens. On many occasions the petitioner requested the assistance of police for enforcing the injunction order against the respondent. But the police officers is of the view that without an order from a court they could not render police assistance. Though petitioners approached before Hon'ble High Court for police protection, it was turned down with a direction to approach the court which passed the injunction order. Hence the petition for enforcement of the injunction order.

3. Respondent filed a counter affidavit with following contentions:-

The petition is maintainable either in law nor on facts. Respondent has not violated or attempted to violate the injunction order. Respondent has not done any physical violence or assault against the devotees or office bearers. Petition is submitted without any basis or bonafides. The church involved in the case was closed under the orders of Executive Magistrate even before the injunction order dated 21.12.98. Thereafter church was reopened as per the orders of the District Magistrate. Subsequently it was again closed. Respondent has never created any situation resulting in the closure of the church. According

to the respondent, OP.14900/2000 filed by the petitioners before High Court was dismissed on 8.6.2000. Petitioner preferred a writ appeal. The remedy of the petitioner, if there is any violation, is to initiate proceedings under Order Rule 2 A C.P.C. Heard both sides. Perused the records.

4. The point for determination is whether direction can be given to police to enforce the temporary injunction order.

5. The points:- Learned counsel for the petitioner/plaintiff submitted that right from 1980 factional dispute in the church resulted in litigations. Patriarch group filed O.S. 19/1980 before this court to remove the elected managing committee. The suit was laid under section 92 CPC. In that suit an Advocate Receiver was appointed to manage the affairs of the church. It is mentioned by the counsel for the plaintiffs that this court appointed Fr. Zacharia (respondent) as a priest to officiate in the place of deceased Fr. John Kalapurakkal. Subsequently Fr. Zacharia was impleaded as 23rd defendant in the above mentioned O.S. 19/1980. That suit was dismissed for want of sanction under section 92 CPC. The receiver was directed to hand over charge to the previous managing committee. 23rd defendant in that suit (Fr. Zacharia) filed an appeal before Hon'ble High Court against the decree in O.S. 19/1980.

Respondent's grievance was that he was recognized only as a priest. Then the respondent filed OS.340/97 in the Munsiff's Court, Perumbavoor. Thereafter in the year 1997 the church was closed under orders of Executive Magistrate under Section 144 Cr.P.C. The present respondent is made a defendant in OS. 143/96 filed before the Sub Court, N. Paravur. It is seen from the chronological chart submitted by the learned counsel for the plaintiff that large number of the proceedings, before the court and before the Executive Magistrate, were initiated in connection with the plaint church. It was argued on behalf of petitioner that the real problem maker in the church is the respondent herein. Plaintiffs complained that order of temporary injunction passed by this court and confirmed by superior courts are being flouted by the respondent.

6. Learned counsel for the respondent submitted that the respondent has never done any act in disobedience of the temporary injunction order. According to him, Hon'ble High Court turned down the request for police protection made by the petitioners in a writ petition. Learned counsel for the petitioner relied on George V. Circle Inspector of Police (1990(1) KLT 741) to contend the following propositions:

"Ordinarily, a civil suit will lie to prevent trespass and to obtain an order of injunction. In an ordinary action in civil court, it is possible to obtain the relief of declaration and also injunction. The civil court can grant relief restraining obstruction or impediment to the enjoyment of property or the goods. So also affirmative relief to load and/unload goods can be given. The civil court will be in a better position to evaluate and grant relief, appropriate to the occasion, even if circumstances require the taking of oral and documentary evidence. The court granting the injunction can implement it by giving consequential directions, including direction to the police authorities to effectuate the order. It can also punish persons for disobeying the order of court, under O.39, R.1 CPC read with R.2-A"

7. In *Sudhadevi v. Circle Inspector of Police* (1997 43 ILR (Kerala series) page 752) the question of enforceability of judgment passed by the Munsiff's Court, was considered by Hon'ble High Court. It is decided therein in the following manner:-

"The judgment passed by the Munsiff shall not be allowed to remain in vacuum and respondents 2 and 3 shall not be allowed to disobey the judgment. What is required in this case is obedience to judgment passed by the learned Munsiff in OS.688/94 upto the period when the appellate court decides the matter, either permanently or temporarily. The question is how obedience to the judgment can be enforced

in the aforesaid situation. Of course, such obedience can be enforced only by resorting to police power and in such circumstances police have the power to see that the judgment of the Munsiff's Court is obeyed by all parties to the suit."

8. Learned counsel for the plaintiffs submitted
plethora of decisions of our High Court relating to the
police protection that can be given to parties in appropriate
cases. It can be seen that large number of decisions by our
High Court on this point came under Article 226 of the consti-
tution of India. The principle discernible from those decisions
is that in appropriate cases in order to preserve the rights
of the parties and also to keep the dignity and honour of
the court's order it can be enforced through police, if anybody
attempts to flout it. It is the specific allegation of the
petitioners that the respondent is creating confusion in
that area by mobilizing persons in order to defeat the
temporary injunction order. Catana of litigations filed at
the age's of respondent probabalizes this aspect. It is true
that the order passed by this court is against the respondent
alone, but it must be made clear that anybody claiming under him
or supporting his cause would also come within the sweep
of the order. Petitioners have a specific case that Hon'ble
High Court in writ petition directed to them to approach

the civil court for enforcement of the order. It is an admitted case that O.P. filed for police protection before the Hon'ble High Court was dismissed. No one shall be allowed to take law into hands and disobey the orders passed by the court with immunity. Considering the entire facts and circumstances this court pass the following order.

In the result, the sub inspector of police, Puthencruz is directed to take adquate steps to enforce the temporary injunction order passed on IA 1569/98 in the above suit against the respondent, in case the sub inspector receives any complaint of violation of temporary injunction order. There is no order as to costs.

Dictated to the Confdl.Asstt. transcribed and typed by her corrected and pronounced by me inopen court on this the 22nd day of August, 2001.

Sd/-

A.Hariprasad,
I Adml.District & Sessions Judge

Appendix - Nil

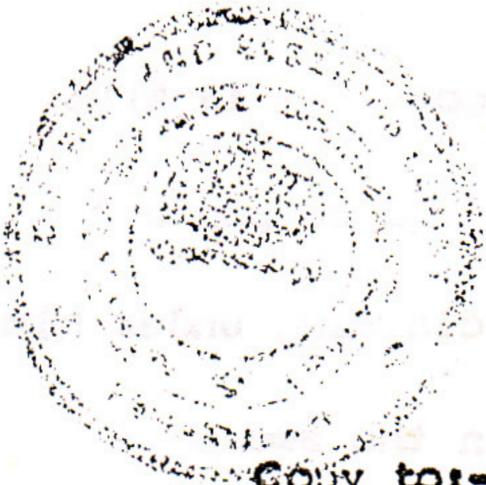
Id/-

I Adml.District & Sessions Judge

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Copy to:- The S.I. of Police, Puthencruz Police Station



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