

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

THURSDAY, THE 31<sup>ST</sup> DAY OF MARCH 2022 / 10TH CHAITHRA, 1944

WA NO. 28 OF 2022

AGAINST THE ORDER/JUDGMENT IN WP(C) 21852/2021 OF HIGH  
COURT OF KERALA

**APPELLANTS:**

- 1 JOHN K A, AGED 73 YEARS, KUMBALASSERIL HOUSE,  
PIRAVOM P.O, EERNAKULAM DISTRICT 686 664
- 2 BIJU K. VARGHESE, KADHALIKKATTIL HOUSE,  
MULAKKULAM NORTH, PIRAVOM 686 664

BY ADVS.  
HARIS BEERAN  
AZHAR ASSEES  
ANAND B. MENON

**RESPONDENTS:**

- 1 STATE OF KERALA, REPRESENTED BY ITS CHIEF  
SECRETARY, GOVERNMENT SECRETARIAT, TRIVANDRUM  
695 001
- 2 THE DIRECTOR GENERAL OF POLICE, POLICE  
HEADQUARTERS, VAZHUTHACAUD, TRIVANDRUM 695 010
- 3 H.G KURIAKOSE MAR CLEMIS, PRESIDENT, MALANKARA  
SYRIAN CHRISTIAN ASSOCIATION, CATHOLICATE  
PALACE, DEVALOKAM, MUTTAMBALAM VILLAGE, KOTTAYAM  
686 038

## Writ Appeal Nos.28 and 29 of 2022

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- 4 H.G YOHANON MAR DIASCOROSE, SECRETARY HOLY EPISCOPAL SYNOD MALANKARA, ORTHODOX SYRIAN CHURCH, CHATHOLICATE PALACE, DEVALOKAM, MUTTAMBALAM VILLAGE, KOTTAYAM 686 038
- 5 H.H BASELIOS MARTHOMA MATHEWS III, CATHOLICATE ARAMANA, DEVALOKAM P.O, KOTTAYAM DISTRICT 686 038

BY ADVS.

SHRI.ASOK M.CHERIAN, ADDL. ADVOCATE GENERAL  
SHYAMPRASANTH T.S., GOVERNMENT PLEADER  
S.SREEKUMAR (SR.)  
ROSHEN.D.ALEXANDER  
TINA ALEX THOMAS  
HARIMOHAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON  
11.03.2022, ALONG WITH WA.29/2022, THE COURT ON  
31.03.2022 DELIVERED THE FOLLOWING:

# Writ Appeal Nos.28 and 29 of 2022

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

THURSDAY, THE 31<sup>ST</sup> DAY OF MARCH 2022 / 10TH CHAITHRA, 1944

WA NO. 29 OF 2022

AGAINST THE ORDER/JUDGMENT IN WP(C) 22951/2021 OF HIGH  
COURT OF KERALA

**APPELLANTS:**

- 1 K.U. BABY, AGED 71 YEARS, S/O. LATE ULAHANNAN,  
KIZHAKKEKARAYIL HOUSE, PIRAVOM P.O, ERNAKULAM  
DISTRICT 686 664
- 2 JOBY C GEORGE, AGED 42 YEARS, S/O. GEORGE C.K,  
CHIRACKAL HOUSE, KAKKAD P.O, PIRAVOM, ERNAKULAM  
DISTRICT 686 664

BY ADVS.  
HARIS BEERAN  
AZHAR ASSEES  
ANAND B. MENON

**RESPONDENTS:**

- 1 STATE OF KERALA, REPRESENTED BY ITS CHIEF  
SECRETARY, GOVERNMENT SECRETARIAT, TRIVANDRUM  
695 001
- 2 THE DIRECTOR GENERAL OF POLICE, POLICE HEAD  
QUARTERS, VAZHUTHACAUD, TRIVANDRUM 695 010

## Writ Appeal Nos.28 and 29 of 2022

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- 3 H.G KURIAKOSE MAR CLEMIS, ARAMANA,  
PATHANAMTHITTA 689 645
- 4 H.G YUHANON MAR DIASCOROSE, SECRETARY HOLY  
EPISCOPAL SYNOD MALANKARA, ORTHODOX SYRIAN  
CHURCH, MAR KURIAKOSE DAYARA, POTHENPURAM P.O,  
PAMPADY, KOTTAYAM 686 502
- 5 H.H BASELIOUS MARTHOMA MATHEWS III, CATHOLICATE  
ARAMANA, DEVALOKAM P.O, KOTTAYAM DISTRICT 686  
038

BY ADVS.

SHRI.ASOK M.CHERIAN, ADDL. ADVOCATE GENERAL  
SHYAMPRASANTH T.S., GOVERNMENT PLEADER  
S.SREEKUMAR (SR.)  
ROSHEN.D.ALEXANDER  
TINA ALEX THOMAS  
HARIMOHAN

THIS WRIT APPEAL HAVING BEEN FINALLY HERAD ON  
11.03.2022, ALONG WITH WA.28/2022, THE COURT ON  
31.03.2022 DELIVERED THE FOLLOWING:

**Writ Appeal Nos.28 and 29 of 2022**

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**A.MUHAMED MUSTAQUE & SOPHY THOMAS, JJ.**

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**Writ Appeal Nos.28 and 29 of 2022**  
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**Dated this the 31<sup>st</sup> day of March, 2022**

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

**A.Muhamed Mustaque, J**

These appeals are filed by the petitioners in the writ petitions. The learned Single Judge dismissed the writ petitions as the same are not maintainable. The challenge in the writ petitions relates to the consecration process of Catholics of the Syrian Orthodox churches without inviting the patriarch of Antioch. The writ petitions were essentially filed in the light of the declaration of law in regard to the affairs of the parish churches, which is a part of the Malankara Church, in view of the decision of the Apex Court in *K.S Varghese v. St.*

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*Peter's and Paul's Syrian Orthodox Church [2017 (3) KLT 261 SC]*. The writ petitioners approached this Court for implementation of one of the directions issued in the above case invoking the writ of mandamus. The said direction of the Apex Court is found in paragraph 157, which reads thus:

*“ If any one shall be consecrated as Catholicos, the Association shall elect him to that office. The Synod shall consecrate the person as Catholicos and there shall be invitation to Patriarch when the Catholicos is to be consecrated and if the Patriarch arrives, he shall consecrate the Catholics with the co-operation of the Synod. S.114 is extracted hereunder: “*

*(Omitted)*

2. They also seek a declaration to the effect that the consecration process completed without inviting the patriarch for consecration is against the judgment of the Apex Court in **K.S Varghese** case (supra).

3. The learned Single Judge held that civil disputes between the parties cannot be decided in writ jurisdiction.

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4. We have no doubt that the judgment of the Apex Court would govern the parties in respect to the Malankara Church. The point that arises for consideration is whether a writ can be issued to implement the judgment of the Apex Court or not.

5. The power of the High Court under Article 226 of the Constitution of India to issue various writs is relatable to the public law remedy. If there is no public law element to invoke Article 226 of the Constitution, the High Court cannot act on prayers to implement the judgment of the Apex Court. It is to be noted that as far as the law is concerned, the decision in **K.S Varghese** case (supra) is rendered on private law premise as the disputants were private parties and the dispute related to the Malankara Church. The writ jurisdictions are predominantly a public law remedy, and not a private law remedy. The domain of Private law is governed by the

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relationship of the individuals or private entities. Public law is the regulation of legal systems related to the general public, society or state. The writ court is not an executing court of the judgment of the Apex Court. If the judgment of the Apex Court is capable of being executed through ordinary civil court, the writ court should not take up the task of implementation or enforcement of the judgment of the Apex Court or this Court.

6. However, there are situations where the writ court may have to intervene in private law as well, when such enforcement or implementation of the judgment predominantly has a public law element. That would arise when public officials or the state is required under law to ensure enforcement of the decree or judgment of the Apex Court, this Court or any other court. So also, in a situation when there are no effective remedies available



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to execute the decree or judgment of the civil court. In fact, in regard to enforcement of the **K.S Varghese** case (supra), this Court had given police protection, as an aid, based on the declaratory relief granted by the Apex Court in the **K.S Varghese** case (supra). It is appropriate to refer to the judgment of this Court in W.P (C) No.33316 of 2019 in paragraph 11 which reads thus:

*“Law and order is a matter of governance. Th civil court has no role in itself to interfere or supervise the matter of governance. The civil court has only limited jurisdiction and power. It can order police assistance as an aid to execute the decree. When nothing remains as executable, the executing power of the civil court cannot be invoked for the police protection alone. The constitutional courts are not only the courts of arbiter resolving disputes but also courts protecting rights guaranteed to the citizen. The constitutional courts have a duty to maintain and uphold the rule of law. When there is a challenge to the rule of law by a citizen who is bound to obey the same, the court can step in by invoking its power of mandamus. The court has to consider whether any effective measures are available otherwise. If there are no other measures, this Court has to invoke its power of writ for the reasons of justice.”*

7. Therefore, in order to issue a writ of mandamus

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or any other writ, petitioners need to demonstrate existence of public law element for the state or public officials to enforce or implement the order. Ordinarily, the constitutional court need not be expected to implement the decree or judgment like an executing court, except when there is a public law element, in enforcing such a decree or judgment.

8. In this case, we find there exists no public law element. If the consecration of Catholics is not in accordance with the directions of the Apex Court, the executing court can very well ensure the implementation of the directions. It is for the executing court to decide whether the directions have been followed or violated and to decide on the execution of the directions. This Court cannot assume violation of direction, to issue a writ of mandamus without essential fact findings. That fact finding cannot be embarked upon

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unless such fact finding overlaps with the public law element. In a dispute involving pure private law element, the constitutional court shall not invoke writ jurisdiction to enforce a judgment, unless enforcement itself lies on Public Law. There exists absolutely no public law element in this case. We, therefore, are of the view that the writ petitioners failed to make out a case for issuance of the writ of mandamus. Thus, appeal fails. Accordingly, dismissed. No order as to costs.

**Sd/-**

**A.MUHAMED MUSTAQUE, JUDGE**

**Sd/-**

**SOPHY THOMAS, JUDGE**

**PR**