

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6263-6265 OF 2001

MATHEWS MAR KOORILOS (DEAD)
AND ANR. ETC.

....Appellants

Versus

M. PAPPY (DEAD) AND ANOTHER ETC.

....Respondents

J U D G M E N T

R. BANUMATHI, J.

Suit O.S. No.187 of 1977 was filed by appellant No.1/Metropolitan of Quilon Diocese of the Malankara Orthodox Syrian Church and appellant No.2/Vicar appointed by him for St. Mary's Church, Kattachira. Defendants/respondents in the suit represent the Parishioners of the Church. Plaintiffs/appellants *inter alia* prayed for a declaration that the Quilon Metropolitan and the Vicars appointed by him have exclusive right to conduct religious services in the plaint church, Cemetery and Kiurisumthotty and prayed for prohibitory injunction restraining the defendants and

others who do not obey the plaintiffs/appellants from entering the plaint church and plaint schedule properties.

2. Case of the appellants is that as per Ext.-A3 (original of which is Ext.-B19) assignment-cum-gift deed dated 29.06.1972, the first defendant C.K. Koshy assigned the plaint properties along with the church and cemetery etc. situated thereon, to the Metropolitan, Quilon Diocese and that they are entitled to conduct religious services and to manage the church and its properties. The Parishioners who question such authority are not entitled to hold any office as members of the Church Committee or to enter the church.

3. Defendants/respondents who are said to be the representatives of the Parishioners contended that the Church was founded with the object of conducting religious services by religious dignitaries who possess the spiritual grace transmitted from the Patriarch of Antioch and all the East, for the benefit of the Parishioners. The church and its properties constitute a trust and can be used only for the purpose for which it was founded. The respondents/defendants contended that the plaintiffs/appellants have repudiated and defied the spiritual powers of the Patriarch and the appellants/plaintiffs are not entitled to conduct any religious services in the plaint church. According to them, the plaint church is

administered under the Constitution framed by the Parishioners marked as Ext.-B9 dated 23.01.1959 and no priest can function in the church without the consent of the Parishioners.

4. The Parishioners/respondents have filed a separate suit in O.S. No.17 of 1976 challenging the validity of Ext.-A3-Sale-cum-Gift Deed (dated 29.06.1972) in favour of Quilon Metropolitan. On the same grounds taken by them in the other suit, they alleged that as beneficiaries of the Church and as its Managing Committee Members, they are entitled to see that its properties are not lost. They prayed for a decree declaring that Ext.-A3-Sale-cum-Gift Deed is *ab initio void* and for a perpetual injunction restraining the Metropolitan from implementing any of the provisions in the said document.

5. The trial court *vide* common judgment dated 06.03.1986 dismissed the suit O.S. No.17 of 1976 filed by the respondents and decreed the appellant's suit O.S. No.187 of 1977, declaring that the appellants have the right to conduct religious services in the plaint church and cemetery. The trial court granted permanent injunction restraining the respondents/defendants and persons who do not obey the plaintiffs/appellants from entering the church and the plaint schedule properties and conducting religious services, and obstructing others who obey the plaintiffs/appellants. The

respondents/defendants were also restrained from obstructing the appellants in completing the construction of the Kattachira church building or attending to its repairs.

6. Being aggrieved, the respondents/defendants filed appeals A.S. Nos.140 and 142 of 1986 in O.S. No.187 of 1977 before the High Court of Kerala challenging the common judgment dated 06.03.1986. The Single Judge dismissed both the appeals and held as under:-

1. *Various clauses of Ext. A3 gift deed dated 29.06.1972 make it clear that the executant Koshy gave the assignment-cum-gift in favour of the Quilon Metropolitan intending that it may be treated as Bhadrasanam properties. Ext. A3 also provided that the Metropolitan may directly administer the said properties or through his representative and that the Parishioners and the Managing Committee should abide by the dictates of the Metropolitan from time to time. In view of the unambiguous terms in Ext. A3, the parishioners are not entitled to question the right of Metropolitan over the plaint church and its properties and its right to conduct religious services.*
2. *Ext. A3 makes it clear that a particular individual has gifted the properties in favour of the first appellant Metropolitan to be treated as Bhadrasanam properties and subject to the control of the first appellant Metropolitan. Once it is recognised that the properties are Bhadrasanam properties over which the first appellant Metropolitan can exercise absolute control and management, appellants are entitled to these reliefs.*
3. *The 1934 constitution shall govern and regulate the affairs of the Parish Churches too. The Parish Churches are not exempted from the clauses of the 1934 Constitution and they are equally constituent of the Malankara Association though it enjoys some degree of autonomy.*
4. *The ex-communication of Catholicos by the Patriarch and/or by the Universal Synod is invalid.*

The Single Judge also held that it is Vicar who should conduct the election as provided in Ext.-A1 Constitution. However, in order to

allay the apprehension of both parties and to ensure that the election is free and fair and in accordance with Ext.-A1 Constitution, the Single Judge appointed two observers to oversee the process of election right from the beginning to ensure that the conditions in Ext.-A1 1934 Constitution and the directions of the Supreme Court are followed.

7. Being aggrieved, the defendants/respondents filed appeals A.F.A. Nos.26-27 of 1997 before the Division Bench. The Division Bench *vide* common judgment dated 04.04.2000 allowed CRP No.1314 of 1998 and disposed of AFA Nos.26-27 of 1997 and set aside the findings of Single Judge. The Division Bench recorded its conclusions as under:-

- That the civil courts have jurisdiction to entertain suits relating to church and its properties and to mould reliefs in such a way as to promote the paramount interest of the parishioners and to reflect the will of the community.
- That though the title of the properties vests with the Quilon diocese, the properties including church, cemetery etc. under Ext.-A3 are still under the control and management of the parishioners of St. Marys Syrian Church, Kattachira.
- That the first plaintiff-Metropolitan of Quilon Diocese had no authority to appoint Vicar for the control and management of the plaint church and its properties though Ext.-A3-Sale-cum-Gift Deed executed by C.K. Koshy in favour of Quilon Diocese and C.K. Koshy, executor of Ext.-A3-Sale-cum-Gift Deed intended to transfer his right in the properties over for the

benefit of entire members of the Church and that the Parishioners have the power to hold the movable and immovable properties of St. Mary's Church.

- That the provisions of the 1934 Constitution sufficiently establish that the Parishioners have power to hold movable and immovable items of properties.

8. We have heard learned senior counsel for the parties at length. We have considered the written submissions and perused the impugned judgment and other materials on record.

9. The issue of spiritual and temporal authority between Malankara Church and the Patriarch of Antioch has been the subject matter of several rounds of litigations in various matters right from the year 1879. It is not necessary for us to elaborately refer to those litigations; suffice to refer the litigations which led to the Constitution Bench judgment in ***Moram Mar Basselios Catholicos v. Thukalan Paulo Avira and others*** AIR 1959 SC 31 and the judgment of three-Judges Bench in ***Most Rev. P.M.A. Metropolitan and others v. Moran Mar Marthoma and another*** 1995 Supp (4) SCC 286 and the latest judgment in ***K.S. Varghese and others v. Saint Peter's and Saint Paul's Syrian Orthodox Church and others*** (2017) 15 SCC 333.

10. **Samudayam Suit:-** The Patriarch group in the year 1938 filed Samudayam suit in the District Court, Kottayam for a declaration of their title as trustees of Samudayam properties (common properties

of the Malankara Church) and for a further declaration that the defendants to that suit belonging to Catholicos group, were not lawful trustees. The suit was dismissed by the trial court on 18.01.1943 against which the plaintiff thereon filed an appeal which was allowed on 08.08.1946 and the suit was decreed¹ by majority of Judges by 2:1. The matter was carried to this Court. This Court directed² the High Court to rehear the appeal on all the points. Thereafter appeal was reheard and was allowed *vide* judgment dated 13.12.1956. The suit was decreed. The defendants, Catholicos group, filed an appeal in this Court which was allowed on 12.09.1958 as per ***Moram Mar Basselios Catholicos v. Thukalan Paulo Avira and others*** AIR 1959 SC 31. Samudayam suit has been elaborated and discussed in paras (17) to (21) in ***K.S. Varghese and others v. Saint Peter's and Saint Paul's Syrian Orthodox Church and others*** (2017) 15 SCC 333.

11. In the year 1979, Catholicos filed O.S. No. 4 of 1979 *inter alia* praying that Malankara Church be declared Episcopal in character and that it is governed in its administration by the Constitution of the Malankara Church. The Catholicos sought for further declaration

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Moram Mar Basselios Catholicos & Anr. v. Most Rev. Mar Poulouse Athanasius & Ors. 1951 SCC OnLine Ker 7

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Moram Mar Basselios Catholicos & Anr. v. Mar Poulouse Athanasius & Ors. AIR 1954 SC 526

that no metropolitan, priest or deacon can officiate in any of the Malankara Churches unless appointed under 1934 Constitution. After dismissal of the suit by the Single Judge of the High Court, the Division Bench allowed the appeal thereby upholding the claim of Catholicos group to larger extent. The matter finally reached to Supreme Court. The Supreme Court in ***Most Rev. P.M.A. Metropolitan and others v. Moran Mar Marthoma and another*** 1995 Supp (4) SCC 286 held that the power and authority of the Catholicos was affirmed in Kalpana A-13 and A-14 and was reinforced and enlarged in 1934 Constitution. It was held that 1934 Constitution is applicable to Malankara Church and its parish Churches and organisations recognising that the Malankara has control over both spiritual and communal affairs of the Malankara Church. It was held that the Patriarch group cannot question the legality and validity of the 1934 Constitution. The court issued further directions for amendment of clause 68 of Constitution to bring about proportional representation based on the size of congregation of each Parish Church.

12. In ***P.M.A. Metropolitan***³, this Court has *inter alia* recorded the conclusions in para (89) as under:-

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“89. The conclusions thus reached are:

1. (a) The civil courts have jurisdiction to entertain the suits for violation of fundamental rights guaranteed under Articles 25 and 26 of the Constitution of India and suits.
- (b) The expression ‘civil nature’ used in Section 9 of the Civil Procedure Code is wider than even civil proceedings, and thus extends to such religious matters which have civil consequence.
- (c) Section 9 is very wide. In absence of any ecclesiastical courts any religious dispute is cognizable, except in very rare cases where the declaration sought may be what constitutes religious rite.

.....

4. (a) The effect of the two judgments rendered by the Appellate Court of the Royal Court and in *Moran Mar Basselios* (supra) by this Court is that both Catholicos and Patriarch groups continue to be members of the Syrian Orthodox Church.
- (b) The Patriarch of Antioch has no temporal powers over the Churches.
- (c) Effect of the creation of Catholicate at Malankara and 1934 Constitution is that the Patriarch can exercise spiritual powers subject to the Constitution.
- (d) The spiritual powers of the Patriarch of Antioch can be exercised by the Catholicos in accordance with the Constitution.
5. (a) The Hudaya Canon produced by the Patriarch is not the authentic version.
- (b) There is no power in the Hudaya Canon to excommunicate Catholicos.
6. The excommunication of the Catholicos by the Patriarch was invalid.
7. All churches, except those which are of Evangelistic Association or Simhasana or St. Mary are under spiritual and temporal control of the Malankara Association in accordance with 1934 Constitution.”

The judgment in ***P.M.A. Metropolitan***⁴ has been elaborately referred to and discussed in paras (26) to (36) in ***K.S. Varghese case***⁵.

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13. **Amendment of the Constitution as per *P.M.A. Metropolitan*⁶ judgment:-** Amendment proposals were considered by this Court in *P.M.A. Metropolitan*⁷. This Court permitted the amendment and directed substitution of Section 68 corresponding to Section 71 and also directed that the election shall take place within three months on the basis of Articles 71 and 46 as amended. This Court further directed *status quo* to be maintained until the new Managing Committee was elected. Subsequently, the matter came up again before this Court pursuant to the *P.M.A. Metropolitan*⁸ and revised decree was passed in *Most Rev. P.M.A. Metropolitan and others v. Moran Mar Marthoma Mathews and another* (1996) 8 SCC 470. The court directed certain modifications in paras (2), (3) and (4). This Court *inter alia* held thus:-

“5. The decree shall then say that the decree passed by the High Court (decree under appeal) shall stand modified to the extent indicated above.

PART II

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6. In Part II of the order dated 25.03.1996⁹, the following sentence shall be inserted before the last sentence: '*The above direction is subject to the condition that any and every person claiming to hold any office or post in this Church shall be bound by and shall swear allegiance to the 1934 Constitution.*'" [Referred to and quoted in para (39) of K.S. Varghese case¹⁰]

The judgment in ***P.M.A. Metropolitan***¹¹ was implemented in execution proceedings before the Kerala High Court. The details of the execution proceedings are discussed in paras (40) to (42) in ***K.S. Varghese case***¹².

14. Dispute arose relating to *Kolenchery Church, Varikoli Church* and *Mannathur Church* regarding which civil suits were filed in a representative capacity. The dispute arising from all these three Churches travelled to this Court. This Court again considered the earlier judgments in ***Moram Mar Basselios Catholicos v. Thukalan Paulo Avira and others*** AIR 1959 SC 31 and ***Most Rev. P.M.A. Metropolitan and others v. Moran Mar Marthoma and another*** 1995 Supp (4) SCC 286. After considering the

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submissions on both sides, in the light of ***Thukalan Paula Avira***¹³ and ***P.M.A. Metropolitan***¹⁴ judgments and after such elaborate consideration, this Court in ***K.S. Varghese case***¹⁵ summarised the conclusions *inter alia* as under:-

“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 Supp (4) 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 Supp (4) 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 Section 11 CPC. 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.

228.5. The Primate of Orthodox Syrian Church of the East is Catholicos. He enjoys spiritual powers as well, as the Malankara Metropolitan. Malankara Metropolitan has the prime jurisdiction regarding temporal, ecclesiastical and spiritual administration of Malankara Church subject to the riders provided in the 1934 Constitution.

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228.6. Full effect has to be given to the finding that the spiritual power of the Patriarch has reached to a vanishing point. Consequently, he cannot interfere in the governance of parish churches by appointing Vicar, priests, Deacons, Prelates (High Priests), etc. and thereby cannot create a parallel system of administration. The appointment has to be made as per the power conferred under the 1934 Constitution on the Diocese, Metropolitan, etc. concerned.

228.7. Though it is open to the individual member to leave a Church in exercise of the right not to be a member of any association and as per Article 20 of the Universal Declaration of Human Rights, the Parish Assembly of the Church by majority or otherwise cannot decide to move Church out of the Malankara Church. Once a trust, is always a trust.

228.8. When the Church has been created and is for the benefit of the beneficiaries, it is not open for the beneficiaries, even by a majority, to usurp its property or management. The Malankara Church is in the form of a trust in which, its properties have vested. As per the 1934 Constitution, the parishioners though may individually leave the Church, they are not permitted to take the movable or immovable properties out of the ambit of the 1934 Constitution without the approval of the Church hierarchy.

228.9. The spiritual power of Patriarch has been set up by the appellants clearly in order to violate the mandate of the *Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma* 1995 Supp (4) 286 of this Court which is binding on the Patriarch, Catholicos and all concerned.

228.10. As per the historical background and the practices which have been noted, the Patriarch is not to exercise the power to appoint Vicar, priests, Deacons, Prelates, etc. Such powers are reserved to other authorities in the Church hierarchy. The Patriarch, thus, cannot be permitted to exercise the power in violation of the 1934 Constitution to create a parallel system of administration of Churches as done in 2002 and onwards.

228.11. This Court has held⁴ in 1995 that the unilateral exercise of such power by the Patriarch was illegal. The said decision has also been violated. It was only in the alternative this Court held in the *Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma* 1995 Supp (4) 286 that even if he has such power, he could not have exercised the same unilaterally which we have explained in this judgment.

228.12. It is open to the parishioners to believe in the spiritual supremacy of the Patriarch or apostolic succession but it cannot be used to appoint Vicars, priests, Deacons, Prelates, etc. in contravention of the 1934 Constitution.

228.13. Malankara Church is episcopal to the extent as provided in the 1934 Constitution, and the right is possessed by the Diocese to settle all internal matters and elect their own Bishops in terms of the said Constitution.

228.14. Appointment of Vicar is a secular matter. There is no violation of any of the rights encompassed under Articles 25 and 26 of the Constitution of India, if the appointment of Vicar, priests, Deacons, Prelates (High priests), etc. is made as per the 1934 Constitution. The Patriarch has no power to interfere in such matters under the guise of spiritual supremacy unless the 1934 Constitution is amended in accordance with law. The same is binding on all concerned.

228.15. Udampadies do not provide for appointment of Vicar, priests, Deacons, Prelates, etc. Even otherwise once the 1934 Constitution has been adopted, the appointment of Vicar, priests, Deacons, Prelates (High priests), etc. is to be as per the 1934 Constitution. It is not within the domain of the spiritual right of the Patriarch to appoint Vicar, priests, etc. The spiritual power also vests in the other functionaries of the Malankara Church.

228.16. The functioning of the Church is based upon the division of responsibilities at various levels and cannot be usurped by a single individual howsoever high he may be. The division of powers under the 1934 Constitution is for the purpose of effective management of the Church and does not militate against the basic character of the Church being episcopal in nature as mandated thereby. The 1934 Constitution cannot be construed to be opposed to the concept of spiritual supremacy of the Patriarch of Antioch. It cannot as well, be said to be an instrument of injustice or vehicle of oppression on the parishioners who believe in the spiritual supremacy of the Patriarch.

228.17. The Church and the cemetery cannot be confiscated by anybody. It has to remain with the parishioners as per the customary rights and nobody can be deprived of the right to enjoy the same as a Parishioner in the Church or to be buried honourably in the cemetery, in case he continues to have faith in the Malankara Church. The property of the Malankara Church in which is also vested the property of the parish churches, would remain in trust as it has for time immemorial for the sake of the beneficiaries and no one can claim to be owners thereof even by majority and usurp the Church and the properties.

228.18. The faith of Church is unnecessarily sought to be divided vis-à-vis the office of Catholicos and the Patriarch as the common faith of the Church is in Jesus Christ. In fact an effort is being made to take over the management and other powers by raising such disputes as to supremacy of Patriarch or Catholicos to gain control of temporal matters under the garb of spirituality. There is no good or genuine cause for disputes which have been raised.

228.19. The authority of Patriarch had never extended to the government of temporalities of the Churches. By questioning the action of the Patriarch and his undue interference in the administration of Churches in violation of the *Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma* 1995 Supp (4) 286, it cannot be said that the Catholicos faction is guilty of repudiating the spiritual supremacy of the Patriarch. The Patriarch faction is to be

blamed for the situation which has been created post 1995 judgment⁴. The property of the Church is to be managed as per the 1934 Constitution. The judgment of 1995⁴ has not been respected by the Patriarch faction which was binding on all concerned. Filing of writ petitions in the High Court by the Catholicos faction was to deter the Patriarch/his representatives to appoint the Vicar, etc. in violation of the 1995 judgment⁴ of this Court.

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 group 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.

228.21. The Udampadies of 1890 and 1913 are with respect to administration of churches and are not documents of the creation of the trust and are not of utility at present and even otherwise cannot hold the field containing provisions inconsistent with the 1934 Constitution, as per Section 132 thereof. The Udampady also cannot hold the field in view of the authoritative pronouncements made by this Court in the earlier judgments as to the binding nature of the 1934 Constitution.

228.22. The 1934 Constitution does not create, declare, assign, limit or extinguish, whether in present or future any right, title or interest, whether vested or contingent in the Malankara Church properties and only provides a system of administration and as such is not required to be registered. In any case, the Udampadies for the reasons already cited, cannot supersede the 1934 Constitution only because these are claimed to be registered.

228.23. In otherwise episcopal Church, whatever autonomy is provided in the Constitution for the Churches is for management and necessary expenditure as provided in Section 22, etc.

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.

228.25. It was not necessary, after amendment of the plaint in Mannathoor Church matter, to adopt the procedure once again of representative suit under Order 1 Rule 8 CPC. It remained a representative suit and proper procedure has been followed. It was not necessary to obtain fresh leave.

228.26. The 1934 Constitution is appropriate and adequate for management of the parish churches, as such there is no necessity of framing a scheme under Section 92 CPC.

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.

228.28. Both the factions, for the sake of the sacred religion they profess and to pre-empt further bickering and unpleasantness precipitating avoidable institutional degeneration, ought to resolve their differences if any, on a common platform if necessary by amending the Constitution further in accordance with law, but by no means, any attempt to create parallel systems of administration of the same Churches resulting in law and order situations leading to even closure of the Churches can be accepted.”

15. Though various arguments were advanced by learned senior counsel Mr. Shyam Divan to urge that the conclusions arrived in **K.S. Varghese case**¹⁶ is not in consonance with the judgment in **P.M.A. Metropolitan**¹⁷, the same do not merit acceptance. Having carefully gone through the conclusions in para (228) of the **K.S. Varghese case**¹⁸, in our view, the conclusions are well in consonance with the **Thukalan Paula Avira**¹⁹ and **P.M.A. Metropolitan**²⁰ judgments. The detailed discussions and

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conclusions arrived at in ***K.S. Varghese case***²¹ settles the disputes between the appellant Patriarch and the respondents Malankara.

16. As per the consistent view taken in the above judgments, 1934 Constitution is valid and binding upon the Parishioners. The Parish Church has to be managed as per the powers conferred under the 1934 Constitution. It is not open to any individual church to have a parallel system of management in the churches under the guise of spiritual supremacy in the Patriarch. As per the consistent findings in the above judgments, the prime jurisdiction with respect to the temporal, ecclesiastical and spiritual administration of the Malankara Church is vested with Malankara Metropolitan and other authorities appointed by Malankara Metropolitan. Malankara Metropolitan enjoys all the temporal, ecclesiastical and spiritual administrative powers (Para (145) of ***K.S. Varghese case***²²). As held in ***K.S. Varghese case***²³, “Full effect has to be given to the finding that the spiritual power of the Patriarch has reached to a

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vanishing point. Consequently, he cannot interfere in the governance of parish churches by appointing Vicar, priests, Deacons, Prelates (High Priests), etc. and thereby cannot create a parallel system of administration.”.

17. The present matter relates to the Parish Church-St. Mary's Church, Kattachira. The plaint Church was listed as Serial No.41- among 1064 Parish Churches included in the plaint Schedule in the representative suit in OS No.4 of 1979. Ext.-A3-Sale-cum-Gift Deed was executed by C.K. Koshy in favour of Metropolitan of Quilon Diocese. The recitals in Ext.-A3 make it clear that C.K. Koshy executed the Sale-cum-Gift Deed in favour of Metropolitan of Quilon Diocese intending that it may be treated as Bhadrasanam properties. Ext.-A3 provided that the Metropolitan may directly administer the said properties or through his representatives. Ext.-A3 further provided that the Parishioners and the Managing Committee should abide by the dictates of the Metropolitan from time to time. The recitals in Ext.-A3 make it clear that St. Mary's Orthodox Syrian Church, Kattachira and the properties have been gifted in favour of first plaintiff-Metropolitan Malankara to be treated as Bhadrasanam properties subject to the control of the Metropolitan in appointing Vicar, Priests etc. As per recitals in Ext.-

A3, the plaint church and the properties come under the spiritual and the temporal control of the Malankara Metropolitan.

18. As per the decision of the Supreme Court in the Constitution Bench in ***Thukalan Paula Avira***²⁴ and ***P.M.A. Metropolitan***²⁵, St. Mary's Church is bound by Ext.-A1 Constitution and the control of the Metropolitan. Having held that the 1934 Constitution is binding upon the Parish Church and its Parishioners, the Division Bench was not right in holding that the Metropolitan had no power to appoint Vicar, Priests etc. The conclusion of the Division Bench that the Parishioners have the right to make all such appointments and to manage the affairs of St. Mary's Church is directly contrary to the express provisions of the 1934 Constitution and the findings of the Supreme Court in ***P.M.A. Metropolitan***²⁶. Considering the recitals in Ext.-A3 and the judgments of the Supreme Court in ***Thukalan Paula Avira***²⁷ and ***P.M.A. Metropolitan***²⁸, the trial court and the

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Single Judge rightly held that the St. Mary's Church is a constituent of Malankara and the power to appoint Vicar, Priests etc. is vested with the first plaintiff-Malankara Metropolitan or his representatives.

19. Metropolitan of Quilon Diocese was exercising control over St. Mary's Church is also evident from various document adduced in evidence referred to in detail in the judgment of the trial court as under:-

“18.Ever since the reproachment was made between the patriarch group and the Catholicose group after the judgment of the Supreme Court in the above case in 1958, the plaint church has paid dues both to the Diocesan Metropolitan and the Catholicose in recognition of their spiritual control over the church. Exts. A4 and A6 would show that the plaint church was sending its delegates for representing it in the Malankara Syrian Christian association. The priests are appointed in the church by the first plaintiff and the church was sending to him the salary due to the priests regularly. Exts. A14 to A17 and A23 to A32 will bear this out. Several other dues payable to the Metropolitan and Catholicose are also seen to have been sent by the plaint church accepting the spiritual supremacy of the Catholicose and the Metropolitan under him. Exts. A18 is the printed annual report of the Quilon Bhadrasanam for the year 1974 showing the contributions made by the Bhadrasanam for the building of the plaint church. Exts. A7 and A8 are Kalpanas issued by the first plaintiff appointing priests to the plaint church.....”

20. The above exhibits referred to in the judgment of the trial court namely appointment of the Priests to the plaint church by the Metropolitan and the regular payment of salary to the Priests so appointed and the church sending its delegates for representing it in the Malankara Church Association and other documents would amply show that the plaint church has been a constituent of

Metropolitan Malankara and the churches and its properties come under the spiritual and temporal control of Catholicos.

21. DW-1 has spoken about the pothuyogam of the plaint church which has taken the decision that Ext.-A1-1934 Constitution is not suitable to the church and the sabha and that as per the said Resolution, the pothuyogam had decided to request the authorities of the Malankara Church or Sabha to repudiate the 1934 Constitution (Ext.-A1) which was then in force. As rightly observed by the trial court, once 1934 Constitution (Ext.-A1) had been adopted by the plaint church and was in force, there can be no question of requesting the authorities to repudiate it. This is also an indication to show that the plaint church has accepted the 1934 Constitution and the spiritual authority of the Catholicos. The finding of the Division Bench that the Metropolitan had no authority to appoint a Vicar is directly opposed to the provisions of the 1934 Constitution and also recitals in Ext.-A3-Sale-cum-Gift Deed and number of other documents adduced by the appellants. The finding of the Division Bench that the Metropolitan had no authority to appoint Vicar and Priests is directly in contradiction to the

Constitution Bench judgment in ***Thukalan Paula Avira***²⁹ and ***P.M.A. Metropolitan***³⁰.

22. Contention of the respondent is that the issue regarding the interpretation of Articles 25 and 26 of the Constitution of India ought to be determined by a Bench comprising at least five Judges of the Supreme Court under Article 145 (3) of the Constitution of India is not tenable. The contention of Patriarch that the Parishioners have a right of freedom of religion and the question of law regarding fundamental rights under Articles 25 and 26 of the Constitution of India had already been raised and elaborately argued by different senior counsels in ***K.S. Varghese case***³¹ (vide paras 57.2, 57.2.1, 57.2.2, 57.4, 59.2, 60, 62 etc.). Contention relating to violation of Articles 25 and 26 of the Constitution of India has been elaborately considered in ***K.S. Varghese case***³² under sub-heading “*In re: parishioners have a right to follow their faith under Article 25 and appointment of Vicar, priest and deacons, etc. and manage affairs*”

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Moram Mar Basselios Catholicos v. Thukalan Paulo Avira & Ors. AIR 1959 SC 31

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Most Rev. P.M.A. Metropolitan and others v. Moran Mar Marthoma and another 1995 Supp (4) SCC 286

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K.S. Varghese and others v. Saint Peter's and Saint Paul's Syrian Orthodox Church and others (2017) 15 SCC 333

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K.S. Varghese and others v. Saint Peter's and Saint Paul's Syrian Orthodox Church and others (2017) 15 SCC 333

under Article 26 of the Constitution of India". After referring to various judgments rejecting the contention of the Patriarch of Antioch as to the violation of the right under Articles 25 and 26 of the Constitution of India. In para (146) of the judgment, it was held as under:-

"**146.** Spiritual power is also with various authorities like Catholicos, Malankara Metropolitan, etc. Thus it is too far-fetched an argument that the Patriarch of Antioch or his delegate should appoint a Vicar or priest. There is no violation of any right of Articles 25 or 26 of the Constitution of India. Neither any of the provisions relating to appointment of the Vicar can be said to be in violation of any of the rights under Articles 25 and 26 of the Constitution of India. The 1934 Constitution cannot be said to be in violation of Articles 25 and 26 of the Constitution of India. It was suggested that the faith involved in the present case refers to apostolic succession from Jesus Christ viz. the blessings and grace of Christ descends through an apostle i.e. St. Peter or St. Thomas as the case may be, and from the said apostle to the Pope/Patriarch who appoints a Vicar. The argument ignores and overlooks other offices that are in-between like Catholicos, Malankara Metropolitan, and Diocesan Metropolitan, etc. It is not necessary for the Pope and the Patriarch to appoint Vicar because management of a Church is not a religious ritual."

We endorse the above view taken in ***K.S. Varghese case***³³ that the 1934 Constitution cannot be said to be in violation of Articles 25 and 26 of the Constitution of India.

23. The impugned judgment of the Division Bench is in contradiction to the judgments of the Supreme Court in ***Thukalan***

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K.S. Varghese and others v. Saint Peter's and Saint Paul's Syrian Orthodox Church and others (2017) 15 SCC 333

***Paula Avira*³⁴, *P.M.A. Metropolitan*³⁵ and *K.S. Varghese case*³⁶**

and the same cannot be sustained. In the result, the impugned judgment is set aside and these appeals are allowed.

.....J.
[RANJAN GOGOI]

.....J.
[R. BANUMATHI]

.....J.
[NAVIN SINHA]

New Delhi;
August 28, 2018

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Moram Mar Basselios Catholicos v. Thukalan Paulo Avira & Ors. AIR 1959 SC 31

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Most Rev. P.M.A. Metropolitan and others v. Moran Mar Marthoma and another 1995 Supp (4) SCC 286

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K.S. Varghese and others v. Saint Peter's and Saint Paul's Syrian Orthodox Church and others (2017) 15 SCC 333