

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 1946 of 2015 (P)

PETITIONER:

**MS. CICILY MATHEW, AGED 25 YEARS
(MATHEW CICILY), D/O. MATHEW A.D., ALAMPARAMBIL HOUSE,
KAITHOTHE ROAD, PALARIVATTOM POST-682 025,
EDAPPALLY SOUTH VILLAGE, KANAYANNOOR TALUK,
ERNAKULAM DISTRICT.**

BY ADV. SRI.V.J.JAMES

RESPONDENT(S):

- 1. THE MARRIAGE OFFICER AND SUB REGISTRAR,
EDAPPALLY SUB REGISTRY, EDAPPALLY POST, KOCHI-682 041.**
- 2. THE DISTRICT REGISTRAR (GENERAL),
OFFICE OF THE DISTRICT REGISTRAR, 2ND FLOOR
PERUMPILLIL BUILDING, OPP. MAHARAJAS COLLEGE GROUND,
KOCHI-682 011.**
- 3. THE INSPECTOR GENERAL OF REGISTRATION
OFFICE OF THE INSPECTOR GENERAL OF REGISTRATION,
VANCHIYOOR POST, THIRUVANANTHAPURAM-695 001.**
- 4. THE STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
DEPARTMENT OF TAXES (REGISTRATION), GOVT.SECRETARIAT
THIRUVANANTHAPURAM-695 001.**

R1 TO R4 BY GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE BIRTH CERTIFICATE ISSUED BY THE COCHIN CORPORATION TO THE PETITIONER.

EXHIBIT P2 : TRUE COPY OF THE AADHAAR CARD BEARING NO.3031 6218 0033 ISSUED BY THE GOVERNMENT OF INDIA TO THE PETITIONER.

EXHIBIT P3 : TRUE COPY OF THE PASSPORT OF MR.ELENGICAL PIOUS THOMAS ISSUED BY THE UNITED STATES OF AMERICA.

EXHIBIT P4 : TRUE COPY OF THE BIRTH CERTIFICATE OF MR.ELENGICAL PIOUS THOMAS ISSUED BY CORPORATION OF COCHIN.

EXHIBIT P5 : TRUE COPY OF THE OVERSEAS CITIZENSHIP OF INDIA (OCI)CARD OF MR.ELENGICAL PIOUS THOMAS.

EXHIBIT P6 : TRUE COPY OF THE NOTICE UNDER SECTION 5 OF THE INDIAN SPECIAL MARRIAGE ACT SUBMITTED BEFORE THE 1ST RESPONDENT.

EXHIBIT P7 : TRUE COPY OF THE CIRCULAR NO.RR.3.25537/2000 DTD.8.8.2014 ISSUED BY THE INSPECTOR GENERAL OF REGISTRATION.

EXHIBIT P8 : TRUE COPY OF NOTICE DTD 27.12.2014 SUBMITTED BEFORE THE 2ND RESPONDENT.

EXHIBIT P9 : TRUE COPY OF THE ORDER NO.MI 4672/14 DTD.5.1.2015 PASSED BY THE 2ND RESPONDENT REJECTING THE APPLICATION.

EXHIBIT P10 :TRUE COPY OF THE CIRCULAR NO.R.R.6.23638/2014 DTD.21.10.2014 ISSUED BY THE INSPECTOR GENERAL OF REGISTRATION, THIRUVANANTHAPURAM.

EXHIBIT P11 :TRUE COPY OF THE CERTIFICATE DTD.6.1.2015 ISSUED BY THE WILL COUNTY OF ILLINOIS STATE, U.S.A.

EXHIBIT P12 : TRUE COPY OF THE AFFIDAVIT DTD.7.1.2015 SWORN BY MR.ELENGICAL PIOUS THOMAS BEFORE JESSICA D TORRES, NOTARY PUBLIC, STATE OF U.S.A.

EXHIBIT P13 : TRUE COPY OF JUDGMENT DTD.29.8.2014 IN WPC NO.22261/2014(G).

EXHIBIT P14 : TRUE COPY OF JUDGMENT DTD.18.9.2014 IN WPC NO.24086/2014(I).

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

vmr.

P.R. RAMACHANDRA MENON, J.

W.P(C). No. 1946 of 2015

Dated this the 11th day of March, 2015

J U D G M E N T

The petitioner herein wants to marry a person by name Elengical Pious Thomas, who originally was an Indian Citizen and is now a citizen of USA and has attained the status of *Overseas Citizen* of India as borne by Ext.P5.

2. The prayers in the writ petition are as follows:

“i) Issue a Writ of Mandamus or other appropriate Writ, Order or Direction, commanding the 1st respondent to register the marriage of the petitioner with Mr.Elengical Pious Thomas (Pious Thomas Elengical), 2611 SWEET BROOM LN, NAPERVILLE IL, 60564, U.S.A., holding that the requirements under section 5 and 6(3) have been satisfied in view Exhibits P-11 and Exhibits P-12.

ii) To award such other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

iii) To award the cost of this proceedings.”

3. The learned Counsel for the petitioner submits that the person concerned with whom, the marriage is sought to be contracted has got all the requisite documents to establish the factual position that he was residing within the jurisdiction of the

first respondent/The Marriage Officer and Sub Registrar. Reliance is sought to be placed on Exts.P6 to P12 produced to substantiate the sequence of events. It is stated that the said party is ready to produce the relevant documents before the first respondent/The Marriage Officer and Sub Registrar in support of the claim.

4. The learned Government Pleader on instruction submits that the notice as per **Section 5 of the Special Marriage Act, 1954** has already been accepted and published and that the stipulated period of **30 days** is already over .

5. It is stated that, it is for the petitioner and the party with whom, the marriage is intended to be contracted, to establish the factual position before the first respondent/The Marriage Officer and Sub Registrar, that the party by name Elengical Pious Thomas had come to India and was staying in the jurisdiction of the first respondent, prior to 30 days of the proceedings, as stipulated in **Section 5 of the Special Marriage Act**. The learned Counsel for the petitioner points out that the said **stipulation is not applicable in** the case of the petitioner, who is having **permanent residence** within the

jurisdiction of the first respondent and that such a stipulation is applicable only in the **case of persons having only temporary residence**. The petitioner has already produced documents to show that the person concerned is having permanent residence within the jurisdiction of the first respondent/The Marriage Officer and Sub Registrar, including Ext.P1 Birth Certificate, Ext.P2 Aadhaar Card.

6. In the said circumstance, the writ petition is disposed of, directing the first respondent/The Marriage Officer and Sub Registrar, to consider the materials to be produced by the petitioner and take necessary steps to cause the marriage registered in terms of the relevant provisions of the Special Marriage Act,1954, which shall be done forthwith, subject to satisfaction of all other requirements in law. The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the first respondent/The Marriage Officer and Sub Registrar, for further steps.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.