

Travancore Devaswom Board vs State of Kerala

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Court : Kerala

Decided On : Jun-10-2024

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr. Justice Harisankar V. Menon

Appeal No. : WP(C)/42458/2022

Appellant : Travancore Devaswom Board

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA & THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON
MONDAY, THE 10TH DAY OF JUNE 2024 / 20TH JYAISHTA, 1946
WP(C) NO. 42458 OF 2022 PETITIONER: TRAVANCORE DEVASWOM BOARD REP. BY IT'S SECRETARY DEVASWOM HEAD QUARTERS, NANDANCODE, KOWDIAR.P.O., THIRUVANANTHAPURAM-695 003. BY ADV G.SANTHOSH KUMAR (P). RESPONDENTS:

1 STATE OF KERALA REP.BY PRINCIPAL SECRETARY, REVENUE (DEVASWOM) DEPARTMENT, GOVERNMENT, SECRETARIAT,

TRIVANDRUM-695001. 2 THE DISTRICT COLLECTOR, COLLECTORATE, 2ND FLOOR CIVIL STATION BUILDING, CIVIL STATION ROAD, THIRUVANANTHAPURAM, PIN- 695043. 3 THE DEPUTY DIRECTOR OF PANCHAYAT, FOURTH FLOOR, CIVIL STATION, KUDAPPANAKKUNNU THIRUVANANTHAPURAM-695043. 4 THE TAHASILDAR, TALUK OFFICE ROAD, NEAR EXCISE OFFICE, EAST FORT, PAZHAVANGADI, THIRUVANANTHAPURAM-.695023. 5 THE VILLAGE OFFICER, MELTHONNAKKAL VILLAGE, THONAKKAL THIRUVANANTHAPURAM-695317. 6 MANGALAPURAM PANCHAYAT, POTHENCODE, MURUKKUMPUZHA ROAD, THIRUVANANTHAPURAM, REP.BY IT'S SECRETARY - 695317. 7 THE SECRETARY, MANGALAPURAM PANCHAYAT, POTHENCODE, MURUKKUMPUZHA ROAD, THIRUVANANTHAPURAM -.695317. 8 THE ASSSITANT ENGINEER, L.S.G.D, MANGALAPURAM GRAMA PANCHAYAT, POTHENCODE, MURUKKUMPUZHA ROAD, THIRUVANANTHAPURAM-695317. 9 THE STATION HOUSE OFFICER, MANGALAPURAM POLICE STATION, MANGALAPURAM, THIRUVANANTHAPURAM-695318. BY ADVS. HANIL KUMAR M H K.J.MANU RAJ(K/297/2003) K.VINAYA(K/175/2006)

OTHER PRESENT: SR. GP- SRI. S. RAJMOHAN, SC,TDB- SRI. G. SANTHOSHKUMAR THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Anil K. Narendran, J The Travancore Devaswom Board has filed this writ petition under Article 226 of the Constitution of India seeking a writ of certiorari to quash Ext.P8 e-tender notice dated 8.11.2022 issued by the 8th respondent-Assistant Engineer of the 6th respondent Mangalapuram Grama Panchayat, to the extent of including the property of Vishnumangalam Sree Mahavishnu Temple (Kuracode)

in Vishnumangalam-Chirayil Road and including the said Devaswom land in the asset register of the Grama Panchayat. It is a temple included in the schedule of

the Devaswom Proclamation of 1122 ME. The petitioner has also sought for a writ of mandamus commanding the 9th respondent Station House Officer to act upon Ext.P5 complaint dated 28.09.2022 made by the Assistant Devaswom Commissioner, Ulloor, regarding the encroachments on Devaswom land; a writ of mandamus commanding the 3rd respondent Deputy Director of Panchayat to act upon Ext.P9 representation dated 17.12.2022 made by the Sub Group Officer, Thonnal; a declaration that the inclusion of Devaswom property in Vishnumangalam-Chirayil Road and its inclusion in the asset register of the 5th respondent Grama Panchayat is illegal; a declaration that the petitioner is entitled to conduct eviction process, based on Ext.P10 sketch and plan dated nil prepared by the Head Surveyor in the office of the Travancore Devaswom Board from the property of Vishnumangalam Sree Mahavishnu Temple, through the Special Tahsildar (Land Conservancy), Travancore Devaswom Board within a time frame.

2. Going by the averments in the writ petition,

Vishnumangalam Sree Mahavishnu temple is a temple under the management of the Travancore Devaswom Board, under Ulloor Group. The Devaswom land of that temple is having an extent of 31.80 Ares comprised in Re-survey No.366/6 (old Survey No.1390) of Melthonnakkal Village in Thiruvananthapuram Taluk. In the year 2014, there was an attempt made by the nearby residents to encroach into the Devaswom land for cutting open a road through that property. Based on the complaint made by the Devaswom officials before the 9th respondent Station House Officer, Ext.P1 Crime No.63/2014 of Mangalapuram Police Station was registered. The alleged encroachers filed O.S.No.73 of 2014 before the Munsiff Court, Attingal against the Secretary of Travancore Devaswom Board and two others, seeking a permanent prohibitory injunction restraining them or any person claiming under them from installing a gate in the south-western side of plaint A schedule pathway, blocking the pathway parallel to the western boundary of plaint B schedule property or from doing any acts, which reduce the width of plaint A schedule pathway, and also from making any alteration to the lie and nature of plaint A schedule pathway. In that suit, the

Munsiff Court granted an ad interim injunction by Ext.P3 order

dated 03.02.2014, whereby the defendants were restrained by a temporary injunction from altering the lie and nature of the boundaries of plaintiff B schedule property in any manner whatsoever, until further orders. That suit was later dismissed for default, by Ext.P4 judgment dated 08.02.2021.

3. On 13.06.2022, the Assistant Devaswom Commissioner, Ulloor preferred Ext.P5 complaint dated 28.09.2022 before the 7th

respondent Station House Officer, alleging unauthorised construction of road through the Devaswom land. On 28.9.2022, the Devaswom Commissioner issued a direction to the Special Tahsildar (Land Conservancy), Travancore Devaswom Board to inspect and ascertain the encroachments in the Devaswom land and initiate urgent steps for removal of the same. On 29.09.2022, the Assistant Devaswom Commissioner, Ulloor submitted a report before the Devaswom Commissioner, wherein it is stated that it is necessary to erect a gate in the main entrance in the south- western end and also to measure and fence the Devaswom land. The Devaswom Commissioner submitted Ext.P6 report dated 10.10.2022 before the Travancore Devaswom Board for necessary directions to the Special Tahsildar (Land Conservancy) to conduct the inspection regarding the alleged encroachments in the Devaswom land. The Board, vide Ext.P7 order dated 31.10.2022 deputed the Special Tahsildar (Land Conservancy) to measure out the Devaswom land and to take necessary steps for eviction. Apart from that, the Board has also entrusted the Chief Engineer to take necessary steps for erecting a gate in the main entrance, for fencing the Devaswom land. While so, the Board came to know about Ext.P8 e-tender notification dated 08.11.2022 issued by the 8th respondent Assistant Engineer of the Grama Panchayat, inviting e-tender for various works, including tarring of Vishnumangalam- Chirayil Road. According to the Board, the Devaswom land is wrongly included in the asset register of the Panchayat. The Sub Group Officer, Thonnal, submitted Ext.P9 representation dated

17.12.2022 before the 3rd respondent Deputy Director of Panchayat, seeking an order directing the 6th respondent Grama Panchayat not to proceed with Ext.P8 e-tender notification. The document marked as Ext.P10 is the sketch and plan dated

nil prepared by the Head Surveyor of Travancore Devaswom Board after demarcating the Devaswom land, showing the encroachments over that property.

4. On 23.12.2022, when this writ petition came up for admission, this Court admitted the matter on file. The learned Senior Government Pleader took notice for respondents 1 to 5 and

9. Urgent notice by speed post was ordered to respondents 6 to

8, returnable by 9.01.2023. This Court granted an interim stay of further proceedings based on Ext.P8 e-tender notification issued by the 8th respondent Assistant Engineer of the Grama Panchayat to the extent of including the work of tarring of Vishnumangalam- Chirayil Road through the encroached Devaswom land, as revealed from Ext.P10 sketch and plan, for a period of one month. The said interim order, which was extended from time to time, is still in force.

5. The 6th respondent Mangalapuram Grama Panchayat

and its Secretary, the 7th respondent herein, have filed a counter affidavit dated 7.10.2023 opposing the relief sought for in this writ petition, producing therewith Exts.R7(a) to R7(e) documents. In the counter affidavit, it is stated that Vishnumangalam-Chirayil Road referred to in the writ petition has been included in Ext.R7(a) asset register of Mangalapuram Grama Panchayat. Therefore, the Grama Panchayat had sanctioned funds in the annual budget for the year 2022-23 for the maintenance of that road. In the light of the interim order granted by this Court on 23.12.2022, the tarring work of the road leading to Vishnumangalam Temple has not been undertaken by the Grama Panchayat. The 8th respondent Assistant Engineer submitted Ext.R7(b) report dated nil to the Panchayat Committee, wherein it is stated that the tarring was proposed in respect of the road starting from Kalluvetty in Pothencode Grama Panchayat to Chirayil, via Vishnumangalam and the disputed road is not included in the tarring.

6. Along with the counter affidavit filed by respondents 6

and 7, Ext.R7(c) letter dated 13.02.2023 of the Temple Advisory Committee of Vishnumangalam Sree Mahavishnu Temple is placed on record, wherein the

Secretary of the Grama Panchayat was informed that the Advisory Committee has no objection in tarring the road in question. The document marked as Ext.R7(d) is a report dated 24.03.2023 of the 8th respondent Assistant Engineer, whereby it is informed that the tarring of Kalluvetty-Chirayil Road was completed by 24.03.2023. The documents marked as Ext.R7(e) series are the photographs of the road in question. The stand taken in the counter affidavit filed by respondents 6 and 7 is that the Grama Panchayat has not encroached on the Devaswom land and the road referred to in the report is a public road, which is used by the public at large. The Panchayat has never encroached on the Devaswom land, as alleged in the writ petition. In the counter affidavit, it is pointed out that the Grama Panchayat was not a party in O.S.No.73 of 2014 on the file of the Munsiff Court, Attingal.

7. The petitioner Travancore Devaswom Board has filed a reply affidavit dated 20.12.2023, wherein it is pointed that it is not discernible from the materials placed along with the counter

affidavit filed by respondents 6 and 7, when exactly Vishnumangalam-Chirayil Road was included in the asset register of the Grama Panchayat. In the reply affidavit, the Board has raised various contentions, with reference to the stand taken by the Grama Panchayat in its counter affidavit. Insofar as Ext.R7(c) no objection certificate issued by the Temple Advisory Committee of Vishnumangalam Sree Mahavishnu Temple is concerned, the Board has stated in the reply affidavit that, the Temple Advisory Committee has no role in the affairs relating to the properties of the Devaswom. On knowing about Ext.R7(c) no objection certificate issued by the Temple Advisory Committee, the Assistant Devaswom Commissioner, Ulloor, by letter dated 31.10.2023 instructed the Sub Group Officer, Thonnal to issue show cause notice against the President and Secretary of the Temple Advisory Committee. Accordingly, show cause notices were issued and the President and Secretary offered their explanation on 5.11.2023. Thereafter, the Sub Group Officer submitted his report dated 6.11.2023 before the Assistant Devaswom Commissioner, Ulloor,

and the matter is now pending before the Devaswom Commissioner.

8. Heard the learned Standing Counsel for the Travancore Devaswom Board for the petitioner, the learned Senior Government Pleader for respondents 1 to 5 and 9 and the learned Standing Counsel for Mangalapuram Grama Panchayat for respondents 6 to 8.

9. 'Deva' means God and 'swom' means ownership in

Sanskrit and the term 'Devaswom' denotes the property of God in common parlance. see: Prayar Gopalakrishnan and another v. State of Kerala and others [2018 (1) KHC 536].

10. In A.A. Gopalakrishnan v. Cochin Devaswom

Board [(2007) 7 SCC 482] a Three-Judge Bench of the Apex Court held that the properties of deities, temples and Devaswom Boards are required to be protected and safeguarded by their trustees/s/ archakas/ shebait/ employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of fence eating the crops should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

11. In A.A. Gopalakrishnan, on the facts of the case on

hand, the Apex Court noticed that, when Respondents 3 to 5 claimed ownership of Survey No.1043, which was the front portion of the temple premises in the possession of the temple (in the proposal for settlement dated 06.07.2000), the Devaswom Board, instead of investigating and verifying as to how they could claim ownership over temple property, strangely agreed for a settlement under which the temple was to get Sy.No.1043 (which was a temple land already in its possession), in exchange for giving away another temple land (Sy.No.1042/2) to

Respondents 3 to 5. The Board Resolution dated 29.08.2000 agreeing for the settlement proposal clearly records that Sy.No.1043 is already in the possession of the temple. Before the Apex Court, respondents 3 and 4 contended that the settlement in the suit (O.S.No.399 of 1998) was validly arrived at between them (the plaintiffs) and the Devaswom Board (the defendant), that the Devaswom Board had considered the proposal after taking legal advice and had duly passed a resolution to settle the suit. It was further contended that a decree having been made in terms of the compromise and such decree having attained finality, it cannot be questioned, interfered or set aside at the instance of a third party in a writ proceeding. They relied on the provisions of Order XXIII, Rule 3A of the Code of Civil Procedure, 1908, which provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The Apex Court held that, the bar contained in Order XXIII, Rule 3A will not come in the way of the High Court examining the validity of a compromise decree, when allegations of fraud/collusion are made against a statutory authority which entered into such compromise. While it is true that decrees of civil courts which have attained finality should not be interfered with lightly, challenge to such compromise decrees by an aggrieved devotee, who was not a party to the suit, cannot be rejected, where fraud/collusion on the part of officers of a statutory board is made out. Further, when the High Court by the

order dated 09.09.1998 had directed the Board to take possession

of Sy.No.1042/2 immediately from Respondents 3 and 4 in CDB No.3 of 1996, in a complaint by another devotee, it was improper for the Board to enter into a settlement with Respondents 2 and 3, giving up the right, title and interest in Sy.No.1042/2, without the permission of the court which passed such order. The Apex Court concluded that, viewed from any angle, the compromise decree cannot be sustained and is liable to be set aside.

12. In Travancore Devaswom Board v. Mohanan Nair

[2013 (3) KLT 132] a Division Bench of this Court noticed that in A.A. Gopalakrishnan [(2007) 7 SCC 482] the Apex Court emphasised that it is the duty of the courts to protect and safeguard the interest and properties of the religious

and charitable institutions. The relevant principles under the Hindu law will show that the Deity is always treated similar to that of a minor and there are some points of similarity between a minor and a Hindu idol. The High Court therefore is the guardian of the Deity and apart from the jurisdiction under Section 103 of the Land Reforms Act, 1957 viz. the powers of revision, the High Court is having inherent jurisdiction and the doctrine of parents patriae will also apply in exercising the jurisdiction. Therefore, when a complaint has been raised by the Temple Advisory Committee, which was formed by the devotees of the Temple, about the loss of properties of the Temple itself, the truth of the same can be gone into by the High Court in these proceedings.

13. In Mohanan Nair the Division Bench relied on the decision in Achuthan Pillai v. State of Kerala [1970 KLT 838], wherein a Full Bench of this Court considered the validity of an

order passed by the Government under Section 99 of the Madras

Hindu Religious and Charitable Endowments Act, 1951. By the said

order the Government cancelled the sanction given for transfer of

immovable property of a Devaswom. The initial order, i.e., Ext.P1

order was passed by the Commissioner for sanction to lease 600

acres of forest land belonging to Emoor Bhagavathy Devaswom. The said order was passed in the year 1960 and the Government cancelled the same by Ext.P5 order dated 23.02.1967. The Full Bench traced the principles regarding the rights of an authority to protect the institution like Devaswom in order to prevent fraud. The Full Bench held that the power to cancel a sanction and thereby to make null and void an improvident transfer or alienation of immovable property of a Devaswom, though exercised under the guise of revision, is visitorial in character. It is a matter of common knowledge that even from very early times religious and charitable institutions in India came under the special protection of the ruling authority. The rulers of the country always asserted their right to visit these

institutions in order to prevent fraud and redress the abuses in their management. In the celebrated Rameswar Pagoda case [(1874) 1 Ind App 209] it was pointed out by the Judicial Committee that the former rulers of this country always asserted the right to visit endowments of this kind to prevent and redress the abuses in their management. The authorities, therefore, support the conclusion that supervision and control of Hindu Religious and Charitable Institutions is a function of government and that Government at all times asserted and exercised the power. The fact that Government did not exercise

the power immediately when it became aware of the circumstances vitiating Ext.P1 order cannot prejudice the interest of the Devaswom. If the contention of the petitioner were to prevail, it would mean that because the Government was not very vigilant in exercising the power the interest of the Devaswom should suffer. Section 10 of the Limitation Act, 1963, provides no period of limitation for a suit against a person in whom the trust property has become vested for any specific purpose or against his legal representatives or assigns for the purpose of following in his or their hands such property. The reason behind the section is that an express trust ought not suffer by the misfeasance or non- feaance of a trustee.

14. In *Mrinalini Padhi v. Union of India* [2018 SCC OnLine SC 667] - order dated 05.07.2018 in W.P.(C)No.649 of 2018 - the Apex Court noticed that the issue of difficulties faced

by the visitors, exploitative practices, deficiencies in the management, maintenance of hygiene, proper utilisation of offerings and protection of assets may require consideration with regard to all Shrines throughout the India, irrespective of religion practiced in such shrines. It cannot be disputed that this aspect is covered by List III Item 28 of the Seventh Schedule to the Constitution of India and there is need to look into this aspect by the Central Government, apart from State Governments. Section 92 of the Code of Civil Procedure, 1908 permits a court also to issue direction for making a scheme or making an arrangement for any charitable or religious institution. Accordingly, the Apex Court directed that, if any devotee moves the jurisdictional District Judge throughout the India with any grievance on the above aspect, the District Judge may either himself/herself or by

assigning the issue/ matter to any other court under his/her jurisdiction examine above aspects and if necessary send a report to the High Court. The High Court will consider these aspects in public interest, in accordance with law, and issue such judicial directions as becomes necessary having regard to individual fact situation.

15. In *Nandakumar v. District Collector and others*

[2018 (2) KHC 58] a Division Bench of this Court noticed that the legal position has been made clear by the Apex Court as to the role to be played by the High Court in exercising the *parens patriae* jurisdiction in *Gopalakrishnan v. Cochin Devaswom Board* [(2007) 7 SCC 482]. The said decision was referred to and relied on by a Division Bench of this Court in *Travancore Devaswom Board v. Mohanan Nair* [2013 (3) KLT 132]. In the said circumstances, the properties of the Devaswom, if at all encroached by anybody and if any assignment/conveyance has been effected without involvement of the Devaswom, securing pattayam or such other deeds, the same cannot confer any right upon the parties concerned, unless the title so derived is clear in all respects. There cannot be any dispute that the remedy to retrieve such property belonging to the Devaswom is by resorting to the course stipulated in the Kerala Land Conservancy Act, 1957.

16. In *A.A. Gopalakrishnan v. Secretary, Cochin*

Devaswom Board [2018 (3) KHC 549] a Division Bench of this Court found that the task undertaken by the complainant to ensure that the property of the Devaswom is protected and preserved has ultimately brought out the plain truth that the said property was sought to be appropriated by strangers and that the property in Sy.No.1042/2 has been successfully retrieved by the Devaswom, based on the intervention made by this Court and also by the Apex Court [*A.A. Gopalakrishnan - (2007) 7 SCC 482*]. Proceedings have to be taken to a logical conclusion in respect of the land in Sy.No.1043 as well. This is more so since in view of the *parens patriae* jurisdiction being entrusted with the Court in this regard and there is a duty cast upon the Court to take every step to ensure that the property of the deity is protected.

17. In Payappar Sree Dharmasastha Temple A. Com.

v. A.K. Joseph [(2009) 14 SCC 628] it was contended before the Apex Court that the Travancore Devaswom Board is a statutory body which came into being only by the Travancore-Cochin Hindu Religious Institutions Act, 1950 and before that, the Government and Devaswom were one and the same and there was no separate existence, and therefore, whatever order was passed by the Government prior to 1950 regarding the land in question, it was also binding upon the Board. It was also contended that Section 27 of the Act does not nullify any assignment by the Government before the Travancore Devaswom Board came into existence. As per Section 27, which deals with Devaswom properties, immovable

properties entered or classed in the revenue records as Devaswom Vaga or Devaswom Poramboke and such other Pandaravaga lands as are in the possession or enjoyment of the Devaswoms mentioned in Schedule I after the 30th Meenam 1097 corresponding to 12.04.1922 shall be dealt with as Devaswom properties. The provisions of the Land Conservancy Act of 1091 shall be applicable to Devaswom lands as in the case of Government lands. After perusing the provisions under Section 27, which deals with Devaswom properties, the Apex Court noticed that after coming into force of the Act of 1950 the administration of temples and all their properties and funds, except Sree

Padmanabhaswami Temple got vested in the Travancore Devaswom Board. It is clearly mentioned in Section 27 that the immovable properties entered or classed in the revenue records as Devaswom property, which is in the possession or enjoyment of the Devaswom effective from 12.04.1922 shall be dealt with as Devaswom properties. The Apex Court held that the interpretation given by the High Court, so far as Section 27 of the Act is concerned, was incorrect as the High Court totally overlooked the fact that Section 27 of the Act stipulates that immovable properties entered or classed in the revenue records as Devaswom Vaga or Devaswom Poramboke after 12.04.1922 would be dealt with as Devaswom properties, whether or not the same Devaswom properties was the issue which was sought to be resolved and adjudicated by the High Court by looking into various documents which were placed on record.

18. In Jayaprakashan K. v. State of Kerala and others

[2023 (3) KHC SN 14 : 2023 (3) KLT 541] a Division Bench of this Court, in which one among us [Anil K. Narendran, J.] was a party, noticed that in view of the provisions under sub-section (1) of Section 3 of the Kerala Land Reforms Act, 1963, nothing in Chapter II (i.e., provisions regarding tenancies) shall apply to leases or tenancies of land referred to in clauses (i) to (xii) of the said sub-section. As per clause (x) of sub-section (1) of Section 3, nothing in Chapter II shall apply to tenancies in respect of sites, tanks and premises of any temple, mosque or church (including sites belonging to a temple, mosque or church on which religious ceremonies are conducted) and sites of office buildings and other buildings attached to such temple, mosque or church, created by the owner, trustee or manager of such temple, mosque or church. In view of the provisions under sub-section (1) of Section 74, after the commencement of the Act, no tenancy shall be created in respect of any land. As per sub-section (2) of Section 74, any tenancy created in contravention of the provisions of sub-section

(1) shall be invalid. In view of the provisions under sub-section (1)

of Section 57, as soon as may be after the receipt of the application under Section 54, the Land Tribunal shall give notice to the landowner, the intermediaries and all other persons interested in the holding, to prefer claims or objections with regard to the application. As per sub-section

(2) of Section 57, the land Tribunal shall, after considering the claims and objections received and hearing any person appearing in pursuance of the notice issued under sub-section

(1) and after making due enquiries, pass orders - (i) on the application, if any, pending before it from the landowner or intermediary for resumption in accordance with the provisions of Section 22; and (ii) on the application for purchase under Section

54. In view of the provisions under sub-section

(1) of Section 72, on a date to be notified by the Government in this behalf in the Gazette, all right, title and interest of the landowners and intermediaries in respect of holdings held by cultivating tenants (including holders of kudiyruppus and holders of karaimas) entitled to fixity of tenure under Section 13 and in respect of which certificates of purchase under sub-section

(2) of Section 59 have not been issued, shall, subject to the provisions of this section, vest in the Government free from all encumbrances created by the landowners and intermediaries and subsisting thereon on the said date. In view of the provisions under sub-section

(1) of Section 72B, the cultivating tenant of any holding or part of a holding, the right, title and interest in respect of which have vested in the Government under Section 72, shall be entitled to assignment of such right, title and interest. As per clause (a) to the proviso to sub-section

(1) of Section 72B, no cultivating tenant shall be entitled to assignment of the right, title and interest in respect of any holding or part of a holding under this section if he, or if he is a member of a family, such family, owns an extent of land not less than the ceiling area. As per clause (b) to the proviso to sub-section

(1) of Section 72B, where the cultivating tenant or, if he is a member of a family, such family, does not own any land or owns an extent of land which is less than the ceiling area, he shall be entitled to the assignment of the right, title and interest in respect of only such extent of land as will, together with the land, if any, owned by him or his family, as the case may be, be equal to the ceiling area. In view of the provisions under sub-section

(1) of Section 72BB, any landowner or intermediary whose right, title and interest in respect of any holding have vested in the Government may apply to the Land Tribunal for the assignment of such right, title and interest to the cultivating tenant and for the payment of the compensation due to him under Section 72A. As per Section 72C, notwithstanding anything contained in sub-section

(3) of Section 72B or Section 72BB, the Land Tribunal may, subject to such rules as may be made by the Government in this behalf, at any time after the vesting of the right, title and interest of the landowners and intermediaries in the Government under Section 72, assign such right, title and interest to the cultivating tenants entitled thereto, and the cultivating tenants shall be bound to accept such assignment. In view of the provisions under Section 72F, the Land Tribunal has to issue notices and determine the compensation and purchase price. As per sub-section

(1) of Section 72F, as soon as may be after the right, title and interest of the landowner and the intermediaries, if any, in respect of a holding or part of a holding have vested in the Government under Section 72, or, where an application under Section 72B or Section 72BB has been received by the Land Tribunal, as soon as may be after the receipt of such application, the Land Tribunal shall publish or cause to be published a public notice in the prescribed form in such manner as may be prescribed, calling upon the landowner, the intermediaries, if any and cultivating tenant; and all other persons interested in the land, the right, title and interest in respect of which have vested in the Government, to prefer claims and objections, if any, within such time as may be specified in the notice and to appear before it on the date specified in the notice with all relevant records to prove their respective claims or in support of their objections. As per the mandate of sub-section

(5) of Section 72F, the land Tribunal shall, after considering the claims and objections received in pursuance of the notice issued under sub-section

(1) or sub-section

(2) and the advice received from the village committee or village committees before the date specified therefor and hearing any person appearing in pursuance of the notice issued under sub-section

(1) or sub-section

(2) and after making due enquiries, pass an order specifying the matters enumerated in clauses (a) to (i) of sub-section (5). As per sub-section

(1) of Section 72K, as soon as may be after the determination of the purchase price under Section 72F or the passing of an order under sub-section

(3) of Section 72MM the Land Tribunal shall issue a certificate of purchase to the cultivating tenant, and thereupon the right, title and interest of the landowner and the intermediaries, if any, in respect of the holding or part thereof to which the certificate relates, shall vest in the cultivating tenant free from all encumbrances created by the landowner or the intermediaries if any.

19. In Jayaprakashan K. [2023 (3) KHC SN 14] the

Division Bench, on an analysis of the aforesaid provisions under the Kerala Land Reforms Act, found that the said Act is a complete code by itself as far as the right of cultivating tenant to fixity of tenure in respect of his holding, the right of the cultivating tenant to get assignment of the right, title and interest in respect of his

holdings, the determination by the Land Tribunal the compensation and purchase price and the issuance of purchase certificate to the cultivating tenant. The provisions under the said Act deal with the application for the purchase of the landlord's right by the cultivating tenant and the procedure for consideration of the application by the Land Tribunal, with notice to the landowner, the intermediaries, if any, the cultivating tenant and all persons interested in the land, calling upon them to prefer claims and objections, if any, and after making due enquiries. Thereafter, the Land Tribunal shall issue a certificate of purchase to the cultivating tenant. In view of the provisions under the Kerala Land Reforms (Tenancy) Rules, where the Land Tribunal is of the opinion that an application for purchase certificate has to be allowed, it shall, before it passes an order under Section 57, prepare preliminary findings on the matters enumerated in clauses (a) to (m) of sub-rule (1) of Rule 55. The Land Tribunal shall issue a notice of its findings to the landowner, every intermediary, etc., calling upon them to prefer in writings claims for the purchase price or part thereof. On receipt of the objections or claims, if any, the Land Tribunal shall consider the same and decide the claims after giving

reasonable opportunity to the parties to produce such evidence as may be necessary and then proceed to pass an order under Section 57 of the Act. In such an order passed by the Land Tribunal on an application filed under Section 54 of the Act by the cultivating tenant for purchase of landlord's right, the Land Tribunal has to record its finding that the applicant is a cultivating tenant, as defined under clause (8) of Section 2 of the Act, who is entitled to fixity of tenure under Section 13 of the Act, in respect of his holding. The tenancy is not in respect of land falling under clauses (i) to (xii) of Section 3 of the Act, which deals with exemptions. The tenancy is not one created in contravention of the provisions of sub-section (1) of Section 74 of the Act, i.e., it is not a tenancy created after the commencement of the Act. It is well settled that, when the statute requires to do certain thing in a certain way, the thing must be done in that way or not at all. Other methods or modes of performance are impliedly and necessarily forbidden. The said proposition of law is based on a legal maxim 'expressio unius est exclusio alterius' meaning thereby that, if the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner, and following other course is not permissible. The said proposition of law about limitation of the exercise of statutory power has first been identified by Jassel M.R. in the case of Taylor v. Taylor [(1876) 1 Ch.D. 426], wherein it was laid down that, where a power is given to do a certain thing in a certain way, that thing must be done in that way, or not at all, and that other methods of performance are necessarily forbidden. The Privy Council applied the said principle in the case of Nazir Ahmed v. King Emperor [AIR 1936 PC 253]. In Breen v. Amalgamated Engineering Union [1971 (1) All ER 1148] Lord Denning, M.R. observed that the giving of reasons is one of the fundamentals of good administration. In Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120] it was observed that failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in

question and the decision or conclusion arrived at. By the order

dated 15.12.2021 in W.P.(C)No.8851 of 2020, this Court restrained all Land Tribunals in the State from proceedings with any Original Application filed before the appointed date or S.M.Proceedings for purchase certificate in respect of

Devaswom lands of Temples under the control/ management of Malabar Devaswom Board, Travancore Devaswom Board and also the Cochin Devaswom Board, without the respective Devaswom Board, represented by its Secretary, in the party array. In the said order, it was made clear that a copy of the Original Application or the report and other materials based on which S.M.Proceedings are initiated shall be enclosed along with the notice issued to the concerned Devaswom Board, through the concerned Village Officer. The Land Tribunals were directed to afford a reasonable opportunity to the concerned Devaswom Board to raise its contentions, both legal and factual. It was made clear that the decision taken by the Land Tribunals shall be one reflecting the legal and factual contentions raised by both sides.

20. In Jayaprakashan K. [2023 (3) KHC SN 14], in

continuation of the order dated 15.12.2021 in W.P.(C)No.8851 of 2020, it was ordered that, in the orders passed by the Land Tribunals in the State in Original Applications/S.M.Proceedings for purchase certificate, the Land Tribunal has to record its findings that the applicant is a cultivating tenant, as defined under clause

(8) of Section 2 of the Act, who is entitled to fixity of tenure under

Section 13 of the Act, in respect of his holding; that the tenancy is not in respect of land falling under clauses (i) to (xii) of Section 3 of the Act, which deals with exemptions; and that the tenancy is not one created in contravention of the provisions of sub-section

(1) of Section 74 of the Act, i.e., it is not a tenancy created after

the commencement of the Act. In respect of temples which are controlled institutions under Malabar Devaswom Board, the Land Tribunals shall take note of the provisions under Section 29 of the Madras Hindu Religious and Charitable Endowments Act, 1951, as per which any exchange, sale or mortgage and any lease of any immovable property belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution.

21. In the instant case, Vishnumangalam Sree Mahavishnu

Temple (Kurakode) is a temple, which is included in the schedule of the Devaswom Proclamation of 1122 ME. As held by the Apex Court in Payappar Sree Dharmasastha Temple [(2009) 14 SCC 628], the status of a Devaswom land has to be decided with reference to the stipulations in Section 27 of the Travancore- Cochin Hindu Religious and Charitable Endowments Act, 1950, as on 12.04.2022. The document marked as Ext.P10 is a sketch and plan dated nil prepared by the Head Surveyor of the Travancore Devaswom Board, after demarcating the Devaswom land of

Vishnumangalam Sree Mahavishnu Temple, showing encroachments over the Devaswom land. Having considered the pleadings and materials on record and

also the submissions made at the Bar, we find that the question as to whether there is any encroachment of Devaswom land of Vishnumangalam Sree Mahavishnu Temple, which is a temple under the management of Travancore Devaswom Board, which is included in the Schedule of the Devaswom Proclamation of 1122 ME, has to be decided with notice to the 6th respondent Mangalapuram Grama Panchayat. That exercise has to be

undertaken by the Special Tahsildar (Land Conservancy), Travancore Devaswom Board, with specific reference to the old survey records, with notice to the concerned Devaswom officials and also the Secretary of the 6th respondent Mangalapuram Grama Panchayat, i.e., the 7th respondent herein, taking note of the statutory provisions referred to hereinbefore and also the law laid down in the decisions referred to supra. That exercise shall be finalised, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a certified copy of this judgment. Till such time, the interim order granted by this Court on 23.12.2022, which was extended from time to time, shall continue to be in force.

The writ petition is disposed of as above. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- HARISANKAR V. MENON, JUDGE sj/11/6 APPENDIX OF WP(C) 42458/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE F.I.R DATED

19/01/2014 REGISTERED BY THE MANGALAPURAM POLICE AS CRIME NO.63/2014. Exhibit P2 TRUE COPY OF THE PLAINT IN O.S.NO.73/2014 FILED BEFORE THE MUNSIFF'S COURT, ATTINGAL.

Exhibit P3 TRUE COPY OF THE INTERIM INJUNCTION ORDER

DATED 03/02/2014 GRANTED BY THE MUNSIFF'S COURT, ATTINGAL IN I.A.NO. 343/2014 IN O.S.NO. 73/2014 ALONG WITH THE PROPERTY SCHEDULE ATTACHED.

Exhibit P4 TRUE COPY OF THE JUDGMENT DATED MUNSIFF'S COURT, ATTINGAL. Exhibit P5 TRUE COPY OF COMPLAINT DATED 28/09/2022 PREFERRED BY THE ASSISTANT DEVASWOM COMMISSIONER, ULLOOR BEFORE THE S.H.O, MANGALAPURAM POLICE. Exhibit P6 TRUE COPY OF THE REPORT DATED 10/10/2022 SUBMITTED BY THE DEVASWOM COMMISSIONER. Exhibit P7 TRUE COPY OF THE ORDER DATED 31/10/2022 PASSED BY THE BOARD. EXHIBIT P-8: TRUE COPY OF THE E-TENDER NOTICE DATED

Exhibit P8

TRUE COPY OF THE E-TENDER NOTICE DA

RESPONDENT. Exhibit P10 TRUE COPY OF THE SKETCH PLAN DATED NIL PREPARED BY THE HEAD SURVEYOR OF TDB.. RESPONDENT EXHIBITS Exhibit R 7 [a] A true copy of the relevant page of the Asset Register Exhibit R 7 [b] A true copy of the report received from the Assistant Engineer dated nil Exhibit R 7 [c] A true copy of the request submitted to the Secretary of Mangalapuram Grama Panchayat dated 13.2.2023 Exhibit R 7 [d] A true copy of the report received from Assistant Engineer, LSD Mangalapuram Grama Panchayat dated nil Exhibit R 7 [e] A true copy of the photograph of the road

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