Babukuttan M vs the Devaswom Commissioner

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Court : Kerala

Decided On : Feb-07-2023

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : DBP/29/2022

Appellant : Babukuttan M

Respondent : The Devaswom Commissioner

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR TUESDAY, THE 7TH DAY OF FEBRUARY 2023 / 18TH MAGHA, 1944 DBP NO. 29 OF 2022 IN THE MATTER OF TRAVANCORE DEVASWOM BOARD - TDB REPORT NO.9/2022 IN COMPLAINT No.2 OF 2021 - IN THE MATTER OF MALAYINKEEZHU SREE KRISHNA SWAMI TEMPLE - ALLEGATION REGARDING THE CONDUCTING OF CHUTTU VILAKKU VAZHIPADU - REG - REG. ------------ PETITIONER/S: BABUKUTTAN M TC.629/216/19, THENGAPPU LANE, LRA-47, PETTA P.O., THIRUVANANTHAPURAM RESPONDENT/S:

1 THE DEVASWOM COMMISSIONER TRAVANCORE DEVASWOM BOARD, NANTHANCODE, KOWDIAR POST, THIRUVANANTHAPURAM, KERALA-695 003 *2 ADDL R2- THE TRAVANCORE DEVASWOM BOARD REPRESENTED BY ITS SECRETARY, NANTHANCODE, KAWDIYAR POST, THIRUVANANTHAPURAM-695 003 *3 ADDL R3-THE DEPUTY DIRECTOR KERALA STATE AUDIT DEPARTMENT, TRAVANCORE DEVASWOM BOARD AUDIT, NANTHANCODE, KAWDIAR POST, THIRUVANANTHAPURAM - 695 003 *ARE SUO MOTU IMPLEADED AS ADDITIONAL RESPONDENTS 2 & 3 VIDE ORDER DATED 12/07/2022 IN DBP.NO.29/2022 BY ADV SHRI.G.BIJU,SC,TRAVANCORE DEVASWOM BOARD, ADV.S.RAJMOHAN, SR. GOVERNMENT PLEADER, ADV.P.RAMACHANDRAN, AMICUS CURIAE THIS DEVASWOM BOARD PETITION HAVING COME UP FOR

ADMISSION ON 07.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2-

ORDER

Anil K.Narendran, J.

This DBP is registered based on TDB Report No.9 of 2022 of

the learned Ombudsman in Complaint No.2 of 2021 made by the complainant, which relates to Malayinkeezh Sree Krishna Swamy Temple, which is under the management of the additional 2 nd respondent Travancore Devaswom Board. In the complaint it is alleged that for conducting chuttuvilakku vazhipadu in the temple, the complainant remitted the amount and obtained receipt through his friend. Though an amount of Rs.1,500/- was paid to the Devaswom for the vazhipadu, the receipt issued was only for Rs.150/-. A copy of receipt No.E-847550 dated 04.01.2021 was enclosed along with the complaint filed before the learned Ombudsman. When the complainant made enquiry, he was informed that the rest of the amount paid by him is towards the price of one tin of oil and thiri for lighting the lamps. In the complaint, the complainant has pointed out various omissions and fraudulent acts happening in the temple. One is regarding pilferage of oil from kedavilakku, which is being used for

chuttuvilakku. Another complaint is regarding kalamezhuthupattu in Vrischikam. After receiving Rs.3,500/- -3receipt is issued for only Rs.250/-. For Ganapathy Homam

Rs.500/- is collected but the receipt is only for Rs.200/-. For many vazhipadu items the amount collected is in excess of the rate fixed. For neeranjanam vazhipadu, coconut is priced at Rs.10/-, however, Rs.30/- or Rs.35/- is collected. Since more than 50 chuttuvilakku vazhipadu are offered in the temple, huge amount is misappropriated. The complainant submitted a similarly

worded complaint before the 1st respondent Devaswom Commissioner, with copy to the President of Travancore Devaswom Board, Vigilance and Security Officer, etc.

2. Before the learned Ombudsman, the 1st respondent

Devaswom Commissioner filed a report dated 08.03.2021 wherein it is stated that the matter could be enquired through the Vigilance or by the Deputy Devaswom Commissioner (Finance & Inspection), as reported by the Deputy Devaswom Commissioner. Accordingly, the matter was entrusted to the Deputy Devaswom Commissioner (Finance & Inspection), who submitted a report dated 16.04.2021. Based on that report, the 1st respondent Devaswom Commissioner filed a report dated 05.07.2021 before the learned Ombudsman pointing out various irregularities on the part of the Sub Group Officer, Malayinkeezh Devaswom. In the

-4said report it is stated that based on the report of the Deputy Devaswom Commissioner (Finance & Inspection) the Assistant Devaswom Commissioner, Neyyattinkara Group, has been authorized to issue a warning to the Sub Group Officer, Malayinkeezh Devaswom and to prepare a proposal for giving receipt for the entire amount collected for chuttuvilakku vazhipadu and for kalamezhuthupattu before the next Vrischika maasam.

3. In TDB report No.9 of 2022, the learned Ombudsman noticed that as evident from the report of the Deputy Devaswom Commissioner (P&SGRC) dated 01.09.2021 the only recommendation made was to give warning to the Sub Group

Officer, which was readily accepted by the Devaswom Commissioner. As per the further report dated 01.12.2021 of the Devaswom Commissioner, the Sub Group Officer, Malayinkeezh

Devaswom was warned by the Assistant Devaswom Commissioner, Neyyattinkara, based on the enquiry report of the Deputy Devaswom Commissioner (Finance & Inspection) to prepare a proposal for chuttuvilakku and Kalamezhuthupattu. The Assistant Devaswom Commissioner, Neyyattinkara has already taken steps to ascertain the views of the Devaswom

-5Tanthri. Once the proposal is prepared, approval for the same will be granted.

4. Before the learned Ombudsman the Senior Deputy

Director, Kerala State Audit Department, Travancore Devaswom Board Audit, has filed a detailed remarks dated 31.03.2022, wherein it is stated that almost all allegations contained in Complaint No.2 of 2021 made by the complainant are true. In TDB Report No.9 of 2022 the learned Ombudsman has stated that the question as to whether a mere warning will be sufficient in the background of the findings on the reports of the Deputy Devaswom Commissioner (Finance & Inspection) and Deputy Devaswom Commissioner (P&SGRC) and also the remarks offered by the Senior Deputy Director, Kerala State Audit Department, is a matter which requires consideration by this Court. The learned Ombudsman has pointed out that taking money from the devotees after giving receipt for a lesser amount

for various vazhipadu in Malayinkeezh Devaswom for considerably long period was noticed by the Devaswom authorities. When a complaint was received, no action was taken, which compelled the complainant to approach the office of the learned Ombudsman and as such it is an appropriate case for -6further direction by this Court.

5. On 12.07.2022, when this DBP came up for

consideration, this Court issued notice to the complainant, returnable within three weeks. The learned Standing Counsel for Travancore Devaswom Board entered appearance for the 1st respondent and also for the additional 2nd respondent. The learned Senior Government Pleader entered appearance for the additional 3rd respondent. The learned Standing Counsel for Travancore Devaswom Board was directed to file counter affidavit within three weeks.

6. The 2nd respondent has filed counter affidavit dated 27.10.2022. Paragraph Nos.2 to 6 of the counter affidavit read thus:

2. It is submitted that a devotee of Malayinkeezhu Temple, Sri.Babukuttan filed a complaint before the learned Ombudsman producing a complaint addressed to the Devaswom Commissioner, Travancore Devaswom Board. The allegations in the complaint were against the employees of Malayinkeezhu Temple.

3. It is submitted that on getting copy of the complaint from

> the office of the learned Ombudsman, the Devaswom Commissioner forwarded the complaint to the Deputy Devaswom Commissioner (Inspection) for detailed enquiry and report. The Deputy Devaswom Commissioner conducted a preliminary enquiry and submitted a report on 16.4.2021. -7- Based on the above report, the Devaswom Commissioner filed reply before the Hon'ble Ombudsman.

4. It is respectfully submitted that on enquiry, the Deputy

> Devaswom Commissioner found that, the allegations in the complaint with regard to 'Chuttuvilakku' and 'Kalamezhuthu Pattu' are true. The employees are not giving receipts for the entire amount collected. The Deputy Devaswom Commissioner submitted a report to the Devaswom Commissioner with recommendations to prepare proposal for the Chuttuvilakku Vazhipadu and to give behavioral development training to the employees in order to improve their behavior towards the devotees.

5. It is submitted that the Devaswom Commissioner on

3.5.2022 issued show cause notices to the Watcher Sri. Venugopal and to the Sub Group Officer Sri. V. Sathikumar for the malpractices revealed in the enquiry. True copy of the show cause notice issued to Sri. Venugopal dated 3.5.2022 is produced herewith and marked as Annexure-R2(a). True copy of tho show cause notice issued to Sri. V. Sathikumar dated 3.5.2022 is produced herewith and marked as Annexure-R2(b). The Walcher Sri. Venugopal submitted his reply on 17.5.2022 and Sri. Sathikumar submitted his reply on 19.5.2022. True copy of the reply submitted by Venugopal dated 17.5.2022 is produced herewith and marked as Annexure-R2(c). True copy of the reply submitted by Sathikumar dated 19.5.2022 is produced herewith and marked as Annexure-R2(d). The Devaswom Commissioner examined the replies submitted by the above persons and found that the replies are not satisfactory.

6. It is submitted that since the reply submitted by the

Watcher is not satisfactory, the Devaswom Commissioner -8- issued memo of charges along with statement of allegations to him on 23.7.2022. True copy of the memo of charges along with statement of allegations dated 23.07.2022 issued by Devaswom Commissioner to Venugopal, Watcher is produced herewith and marked as Annexure-R2(e). He received the memo of charges and submitted his written explanation on 25.8.2022. True copy of the written explanation dated 25.8.2022 submitted by Venugopal, Watcher to the Devaswom Commissioner is produced herewith and marked as Annexure- R2(f). The explanation submitted was not satisfactory and hence the Devaswom Commissioner decided to proceed with the disciplinary action and appointed an enquiry officer for conducting domestic enquiry. True copy of the order, R.O.C. 1953/21, appointing the Enquiry Officer to conduct domestic enquiry against Venugopal is produced herewith and marked as Annexure- R2(g). Similarly memo of charges and statement of allegations were issued to the S.G.O. Sri. V. Sathikumar on 6.8.2022. True copy of the memo of charges along with statement of allegations dated 6.8.2022 issued by Devaswom Commissioner to the Sub Group Officer, V. Sathikumar is produced herewith and marked as Annexure-R2(h). The written explanation submitted by the S.G.O. is under consideration of Devaswom Commissioner.

7. On 06.12.2022 when this matter came up for

consideration, the learned Standing Counsel for Travancore Devaswom Board submitted that though a copy of the counter affidavit of the 2nd respondent was sent by registered post with A.D to the petitioner/complainant, the envelope was returned -9with an endorsement 'addressee left', which shall be placed on record along with a memo. The said envelope is placed on record along with the memo dated 07.12.2022 of the learned Standing Counsel.

8. On 10.01.2023, when this DBP came up for

consideration, after arguing for some time, the learned Standing Counsel for Travancore Devaswom Board sought time to place on record the general directions issued by the Board regarding issuance of proper receipts to devotees in respect of Vazhipadu items in the temples under the management of Travancore Devaswom Board.

9. Heard the learned Standing Counsel for Travancore

Devaswom Board for respondents 1 and 2, the learned Senior Government Pleader for the 3rd respondent Deputy Director, Kerala State Audit Department and also the learned Amicus Curiae for the learned Ombudsman.

10. Travancore-Cochin Hindu Religious Institutions Act, 1950 enacted by the State Legislature makes provision for the administration, supervision and control of incorporated and unincorporated Devaswoms and of other Hindu Religious Endowments and Funds. Chapter II of the Act deals with the -10Travancore Devaswom. Section 3 of the Act deals with vesting of

administration in Board. As per Section 3, the administration of incorporated and unincorporated Devaswoms and of Hindu Religious Endowments and all their properties and funds as well as the fund constituted under the Devaswom Proclamation, 1097 M.E. and the surplus fund constituted under the Devaswom (Amendment) Proclamation, 1122 M.E. which were under the management of the Ruler of Travancore prior to the first day of July, 1949, except the Sree Padmanabhaswamy Temple, Sree Pandaravaka properties and all other properties and funds of the said temple, and the management of all institutions which were under the Devaswom Department shall vest in the Travancore Devaswom Board.

11. Section 4 of the Act deals with constitution of the

Travancore Devaswom Board. As per sub-section (2) of Section 4, the Board shall be a body corporate having perpetual succession and a common seal with power to hold and acquire properties for and on behalf of the incorporated and unincorporated Devaswoms and Hindu Religious Institutions and Endowments under the management of the Board. -11-

12. Section 15 of the Act deals with vesting of jurisdiction

in the Board. As per sub-section (1) of Section 15, subject to the provisions of Chapter III of Part I, all rights, authority and jurisdiction belonging to or exercised by the Ruler of Travancore prior to the first day of July, 1949, in respect of Devaswoms and Hindu Religious Endowments shall vest in and be exercised by the Board in accordance with the provisions of this Act. As per sub- section (2) of Section 15, the Board shall exercise all powers of direction, control and supervision over the incorporated and unincorporated Devaswoms and Hindu Religious Endowments under their jurisdiction.

13. Section 15A of the Act, inserted by Act 5 of 2007, with

effect from 12.04.2007, deals with duties of the Board. As per Section 15A, it shall be the duty of the Board to perform the following functions, namely, (i) to see that the regular traditional rites and ceremonies according to the practice prevalent in the religious institutions are performed promptly; (ii) to monitor whether the administrative officials and employees and also the

employees connected with religious rites are functioning properly; (iii) to ensure proper maintenance and upliftment of the Hindu religious institutions; (iv) to establish and maintain proper -12facilities in the temples for the devotees. Section 16 of the Act deals with supervision and control by the Board. As per Section 16, the Board shall, subject to the provisions of Part I of the Act, exercise supervision and control over the acts and proceedings of all officers and servants of the Board and of the Devaswom Department.

14. Section 31 of the Act deals with management of

Devaswoms. As per Section 31, subject to the provisions of Part I and the rules made thereunder, the Board shall manage the properties and affairs of the Devaswoms, both incorporated and unincorporated as heretofore, and arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its usage.

15. In M.V.Ramasubbiar v. Manicka Narasimachara

[(1979) 2 SCC 65], in the context of Sections 49, 51 and 52 of the Trusts Act, 1882, the Apex Court explained the nature of the fiduciary position of the trustee and his duties and obligations. It is the duty of the trustees of the property to be faithful to the Trust and execute any document with reasonable diligence in the manner of an ordinary prudent man of business would conduct his own affairs. A trustee could not therefore occasion any loss to

-13the Trust and it is his duty to sell the property, if at all that was necessary, to best advantage. Paragraph 4 of that decision reads thus;

> 4. There is some controversy on the question whether defendant 1 made an outright purchase of the suit property for and on behalf of the trust for Rs. 21,500 on April 19, 1959, or whether he intended to purchase it for himself and then decided to pass it on to the trust, for defendants have

led their evidence to show that the property was allowed to be sold for Rs.21,500, which was less than its market value, as it was meant for use by the trust and that Defendant 1 was not acting honestly when he palmed off the property to his son soon after by the aforesaid sale deed Ext.B13 dated July 14, 1960. The fact, however, remains that Defendant 1 was the trustee of the property, and it was his duty to be faithful to the trust and to execute it with reasonable diligence in the manner an ordinary prudent man of business would conduct his own affairs. He could not therefore occasion any loss to the trust and it was his duty to sell the property, if at all that was necessary, to best advantage. It has in fact been well recognised as an inflexible rule that a person in a fiduciary position like a trustee is not entitled to make a profit for himself or a member of his family. It can also not be gainsaid that he is not allowed to put himself in any such position in which a conflict may arise between his duty and personal interest, and so the control of the trustee's discretionary power prescribed by Section 49 of the Act and the prohibition contained in Section 51 that the trustee may not use or deal with the trust property for his own profit or for any -14- other purpose unconnected with the trust, and the equally important prohibition in Section 52 that the trustee may not, directly or indirectly, buy the trust property on his own account or as an agent for a third person, cast a heavy responsibility upon him in the matter of discharge of his duties as the trustee. It does not require much argument to proceed to the inevitable further conclusion that the Rule prescribed by the aforesaid sections of the Act cannot be evaded by making a sale in the name of the trustee's partner or son, for that would, in fact and substance, indirectly benefit the trustee. Where therefore a trustee makes the sale of a property belonging to the trust, without any compelling reason, in favour of his son, without obtaining the permission of the court concerned, it is the duty of the court, in which the sale is challenged, to examine whether the trustee has acted reasonably and in good faith or whether he has committed a breach of the trust by benefitting himself from the transaction in an indirect manner. The sale in question has therefore to be viewed with suspicion and the High Court committed an error of law in ignoring this important aspect of the law although it had a direct bearing on the controversy before it. (underline supplied)

16. In Travancore Devaswom Board v. Mohanan Nair [(2013) 3 KLT 132] a Division Bench of this Court noticed that

in A.A. Gopalakrishnan v. Cochin Devaswom Board [(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 -15relevant 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 parens 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.

17. In discharge of the statutory duty under Section 15A

of the Act, it is the duty of the Travancore Devaswom Board to monitor whether the administrative officials and employees and also the employees connected with religious rites are functioning properly. Though serious irregularities were pointed out in the complaint made by the complainant, which was numbered as Complaint No.2 of 2021 before the learned Ombudsman, which were found to be true in the reports of the Deputy Devaswom Commissioner (Finance & Inspection) and also Deputy Devaswom

-16Commissioner (P&SGRC), the recommendation made by the

Devaswom Commissioner was only to warn the concerned Devaswom staff. Now, after the report of the learned Ombudsman, i.e., TDB Report No.9 of 2022 dated

06.04.2022, based on which this DBP was registered, the Devaswom Commissioner has issued Annexure R2(a) show cause notice to Sri.Venugopal, the Watcher and Annexure R2(b) show cause notice dated 03.05.2022 to Sri.Sathikumar, the Sub Group Officer, based on the malpractices revealed in the enquiry. They have submitted Annexure R2(c) reply dated 17.05.2022 and Annexure R2(d) reply dated 19.05.2022. Since the explanation offered by Venugopal was not satisfactory, the Devaswom Commissioner issued Annexure R2(e) memo of charges with statement of allegations, to which he submitted Annexure R2(f) written explanation. Now, by Annexure R2(g) order the Devaswom Commissioner has appointed an enquiry officer to conduct domestic enquiry against Venugopal. Sri.V.Sathikumar, the Sub Group Officer was issued with Annexure R2(h) memo of charges with statement of allegations. In the counter affidavit filed by the 2nd respondent it is stated that the written explanation submitted by the Sub Group Officer is under consideration of the Devaswom Commissioner.

-17-

18. During the course of arguments, the learned Standing Counsel for Travancore Devaswom Board brought to the notice of this Court the general directions issued by the Board regarding

vazhipadu in temples under its management, vide ROC No.10416/12/SUIT/NS dated 01.04.2016, which was amended vide orders dated 28.05.2016, 16.12.2016, 17.05.2017 and 18.05.2017. We do not propose to consider those aspects in this DBP, in view of the pendency of the disciplinary proceedings initiated against Sri.Venugopal, the Watcher. The written explanation made by Sri.V.Sathikumar, the Sub Group Officer to Annexure R2(h) memo of charges is also pending consideration before the Devaswom Commissioner. In the above circumstances, this DBP is disposed of taking

note of the pendency of the proceedings initiated against the Watcher and the Sub Group Officer of Malayinkeezh Devaswom. The remarks submitted by the Senior Deputy Director, Kerala State Audit Department, in complaint No.2 of 2021 pointing out various irregularities in Malayinkeezh Devaswom shall be placed before the Board for necessary remedial measures, pending finalization of the proceedings initiated against the Watcher and the Sub Group Officer of the said Devaswom. The remedial

-18measures taken by the Board shall be brought to the notice of

this Court, by filing a DBA, within two months from the date of receipt of a certified copy of this order. similarly, the outcome of the proceedings initiated against the Watcher and the Sub Group Officer of Malayinkeezh Devaswom shall also be brought to the notice of this Court immediately after the culmination of those proceedings.

Sd/- ANIL K. NARENDRAN JUDGE Sd/- P.G.AJITHKUMAR JUDGE jg -19- APPENDIX ANNEXURE R2(a) TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED TO SRI.VENUGOPAL DATED 03.05.2022 ANNEXURE R2(b) TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED TO SRI.V.SATHIKUMAR DATED 03.05.2022 ANNEXURE R2(c) TRUE COPY OF THE REPLY SUBMITTED BY VENUGOPAL DATED 17.05.2022 ANNEXURE R2(d) TRUE COPY OF THE REPLY SUBMITTED BY SATHIKUMAR DATED 19.05.2022 ANNEXURE R2(e) TRUE COPY OF THE MEMO OF CHARGES

ALONG WITH STATEMENT OF ALLEGATIONS ISSUED BY DEVASWOM COMMISSIONER TO VENUGOPAL, WATCHER DATED 2307.2022 ANNEXURE R2(f) TRUE COPY OF THE WRITTEN EXPLANATION DATED 25.08.2022 SUBMITTED BY VENUGOPAL, WATCHER TO THE DEVASWOM COMMISSIONER. ANNEXURE R2(g) TRUE COPY OF THE ORDER ROC 1953/21 APPOINTING THE ENQUIRY OFFICER TO CONDUCT DOMESTIC ENQUIRY AGAINST SRI.VENUGOPAL. ANNEXURE R2(h) TRUE COPY OF THE MEMO OF CHARGES ALONG WITH STATEMENT OF ALLEGATIONS ISSUED BY DEVASWOM COMMISSIONER TO SGO V.SATHIKUMAR DATED 06.08.2022