In Re: Temples in the Erstwhile Malabar Area

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Court : Kerala

Decided On : Jul-21-1994

Reported in : AIR1995Ker172

Judge : K.P. Balanarayana Marar and; P.K. Balasubramanyan, JJ.

Acts : Madras Hindu Religious and Charitable Endowments Act, 1951 - Sections 3, 20, 23 and 30; Constitution of India - Articles 14, 16 and 226; Kerala Private Forests (Vesting and Assignment) Act, 1971

Appeal No. : O.P. No. 214 of 1992-S

Appellant : In Re: Temples in the Erstwhile Malabar Area

Advocate for Pet/Ap. : N. Sankara Menon, Govt. Pleader,; P. Santhalingam,; P.V.

Judgement :

Balanarayana Marar, J.

1. Malabar, that part of the west coast between mala (hill) and bar (sea), was a neglected area while it was part of the erstwhile State of Madras. After the formation of the Kerala State, Malabar merged in that State. From thereafter the neglect continued. The temples in Malabar and their employees are no exception. Though reasonable remuneration is received by the temple employees in the erstwhile Travancore and Cochin areas of the State, the temple employees in

Malabar are getting only a pittance. The plight of the employees was highlighted in a news item which appeared in the Hindu daily dt. 27-12-1991 under the caption 'A raw deal for temple staff.

2. A Division Bench of this Court treated this news item as a public interest litigation and by order dt. 3-1-1992 this Court directed notice to be issued to the State of Kerala represented by the Chief Secretary and the Commissioner, Hindu Religious Endowments Commission, to show cause why the above matter should not be taken as a public interest litigation and appropriate orders passed thereon as remedial measures. The matter was directed to be numbered as a original petition.

3. The pitiable and pathetic state of affairs existing in the temples in the erstwhile Malabar area and also the poor living conditions of the employees in those temples were highlighted in the above mentioned news item. Since the grievances voiced in the news item are incorporated in the order dt. 3-1-1992, it is only appropriate to extract that order.

4. The order reads:

'the leading English Daily, 'The Hindu', dated 27th December 1991, Friday, at page 3, contains a news item captioned under the heading 'A raw deal for temple staff?'. It is seen therefrom that there are nearly 1300 temples in the erstwhile Malabar area having 9000 employees, governed by the Hindu Religious and Endowments Act. Of the above, only 60 temples are financially viable and the rest are in a pathetic condition in as far as daily poojas and living standards are concerned. The employees are getting as low salary of Rs. 6/- per month, whereas the Manager of a temple gets Rs. 2000/- per month. It is further seen that though this matter was highlighted, and the poor and pitiable condition of the temples and also the low salary of the employees were also brought to the notice of successive Governments, no effective action has been taken with regard to the problems of the temples of the employees. It is highlighted in the said news item that whereas the employees of the Travancore and Cochin Devaswoms enjoy regular salary, welfare funds and pension, their counterparts in the erstwhile Malabar area, doing the same work, and placed in the same condition, are not getting a living wage

and many of themare getting a low salary of Rs. 5/ per month. In the same page of the Daily, the President of the Kerala Thanthri Samajam is seen to have stated that many temples in Kerala are in a disastrous condition and in some temples even the daily poojas are not conducted. We find from the issue of the Hindu dated 31st December, 1991, page 3, that Sri T.T. Raman Bhattathiripped, President of the Travancore Devaswom Board, had also stated that in order to look after the temples in the erstwhile Malabar area on the lines of the temples under the Travancore and Cochin Devaswom Boards, a separate Board should be set up and then only it will improve the conditions of the temples and better the service conditions of the employees of the temples.

The above news item, appearing in a leading Daily, highlights the pitiable and pathetic state of affairs existing in the temples in the erstwhile Malabar area and also the poor living conditions of the employees in the said temples. The matter centres round a 'human problem'.

We are satisfied that public interest reguires that the administration of the temples in the estwhile Malabar area and the living conditions of the employees of those temples require a probe and appropriate steps should be taken to remedy the evil and injustice. Therefore, in exercise of the powers vested in this court under Article 226 of the Constitution of India, we issue notice (1) to the State of Kerala, represented by the Chief Secretary to Government, and (2) the Commissioner, Hindu Religious Endowments Commission, Kerala State, Trivandrum, to show cause why the above matter should not be taken as a public interest litigation and appropriate orders passed by this Court as remedial measures, Notice returnable in 10 days. The matter may be numbered as Original Petition.'

5. The State of Kerala is the 1st respondent. The 2nd respondent is styled as Commissioner, Hindu Religious and Endowments Commission, Kerala State, Trivandrum But statements are being filed by the Commissioner, Hindu Religious and Charitable Endowment (Administration) Department,Koshikode as if the Commissioner of that Department is the 2nd respondent. Though the 2nd respondent is described as Commissioner, High Religious Endowments Commission, the 2nd respondent is really the Commissioner, Hindu Religious and

Charitable Endowment (Administration) Department, Kozhikode, Second respondent will be described accordingly in this judgment and in all other proceedings connected thereto. Additional respondents 3 to 16 were impleaded on their applications.

6. Various statements and affidavits are being filed on behalf of respondents 1 and 2. In the first affidavit dt. 15-1-1992 and filed on 16-1-1992 it is averred that Government have no objection in looking into the grievances of the employees of the temples in Malabar area and redressing their genuine grievances consistent with the financial position of the Government. It is further mentioned that Hindu Religious and Charitable Endowment Department has already submitted a welfare fund scheme for the employees of those temples and the scheme is under the consideration of the Government, Government will take a decision in the matter consistent with their financial position and considering the other facts and circumstances mentioned in the affidavit. In particular it is stated that each temple in Malabar is a separate unit with distinct administrative right. The income of each temple can be spent in that temple alone. The Department has only a supervisory role as laid down in the Madras Hindu Religious and Charitable Endowments Act, 1951. The State Government is giving a renovation grant of Rs. 10 lakhs every year to the Department and this amount is distributed to the selected temples based on its need/urgent requirements for renovation etc. The salary to the employees are paid by the temple authorities themselves from the funds of the respective Devaswoms.

7. By order dt. 23-1-1992 this Court directed the Government to give publicity to this matter through the Public Relations Department in all medias-press, radio and television--which will invite the Hindu Public in Malabar area to have their say inthis public interest litigation. This court expressed the hope that appropriate steps will be taken by the Government in this regard without any further delay. As directed by this court the requisite publication was made and a statement was filed dt. 10-2-1992 pointing out that pendency of this original petition has been published in all the dailies through the Public Relations Department and also through radio and television. The news item so published has stated that the Hindu public are at liberty to approach this court and to have their say in the

matter. It is further stated that Government is ready and willing to furnish any other details that are required for a just and fair disposal of the original petition. Along with that statement a list of the temples having an income of less than Rs. 10,000/- per year is also appended. Another list showing the details of the temples managed by executive officers was also annexed with the statement. Still another statement was filed on 6-4-1992 to which also is annexed a list of the temples and their respective income for three years commencing from 1-7-1988 up to 30-6-1991. In a separate statement filed by the 2nd respondent on 24-6-1992 it is stated that 2nd respondent has nothing more to say thanwhat has been stated in the counter affidavit dated 15-l-1992 on behalf of respondents 1and 2. Still another statement is seen filed on behalf of the. 2nd respondent on 7-8-1992 wherein it is stated that each temple in theMalabar area is a separate entity and each temple is at liberty to spend its own income for the well being of its employees and its general welfare. The wages and other emoluments of the employees of each temple, will depend upon the income of a particular temple. Majority of the temples are managed by hereditary trustees. The Department has only a supervisory role. Government have no direct control over the employees of the temples.

8. In answer to the direction of this Court regarding the delay in the preparation of the annuity payable to the various temples under the Land Reforms Act, a statement was filed on 20-11-1992 on behalf of the Secretary to the Government narrating the steps taken by the Government for fixation of annuity andstating that the delay in fixing the final annuity amount is on account of the fact that the assignment to the tenants of the land in their respective possession has not been completed so far. It is further stated that Government will take all possible steps to finalise the accounts and to pay the amount to the Devaswom as early as possible.

9. On behalf of the 1st respondent a statement was filed on 15-7-1993 admitting that the Malabar temple employees are not paid wages commensurate with their work. But it was contended that Malabar temples are administered in a different set up from the temples administered by the Travancore and Cochin Devaswom Boards. The Malabar temples can be considered similar to the unincorporated Devaswoms of erstwhile Travancore-Cochin area. The temples in Malabar are

owned by various families in the form of Trusts. The management vests in those families. Neither the Government nor the Department has any control over their assets. The Department only sees to it that the income is properly applied. In case the salaries are to be increased, it has to be done by the Trustees. Regarding the unified Devaswom Board it is stated that the matter is receiving the attention of the Government. A welfare Fund Scheme is under the contemplation of the Government. Government will be taking expeditious steps for fixing annuity in accordance with law. The matter is delayed since records of various land Tribunals, State Land Board and records of other authorities had to be perused. The statement also mentions the details of the grant given by the Government to the Kerala Wakf Board for social welfare schemes since 1984-85. It is also mentioned that the special grant of maintenance of temples has been doubled.

10. Statements or affidavits are seen filed by respondents 3 to 9, 13, 15 and 16. The contentions raised in these statements and affidavits are more or less the same. They only highlight the pathetic condition of the temple employees in Malabar as well as the condition of the temples. The associations of the temple employees require revision of wages.

Payment of reasonable wages for their livelihood is demanded by those associations. Request is also made by the respondents to constitute a Devaswom Board for Malabar and an apex body for all the three Boards viz. the Travancore and the Cochin Devaswoms and the Malabar Devaswom Board to be constituted in future.

11. On the side of respondents Exts. R1 to R20 were tendered in evidence and marked as exhibits. Eleven witnesses were also examined. Heard senior Government Pleader Sri Sankara Menon on behalf of respondents 1 and 2 and the counsel appearing for the other respondents.

12. Though notice was issued on the news item highlighting the pitiable condition of the employees of the temples in Malabar, the scope of this public interest litigation entertained on the basis of that news item was since then enlarged and enquiry proceeded on the aspect of the conditions of the temples also as well as the necessity of a Board for the management of the temples in Malabar.

Arguments were therefore heard in extenso on all the aspects involved.

13. The first and the main aspect to be considered in this original petition is whether the employees of the temples in Malabar deserve a better deal and, if so, what should be the basis for the same. All the witnesses examined on the side of the respondents consistently speak about the poor service conditions of the employees and the low salary paid to them. R.W. 2, a witness examined on the side of the Addl. 3rd respondent, has spoken about the wages paid to him. He is an employee of Thiruvegappura Mahadeva Temple. He is employed as a Kashakam. The functions attached to the Kazhakam are (1) making of garlands for the deity, (2) cleaning temple vessels, and (3) cleaning the places in and around the sanctuary. For these functions he is at present paid a consolidated remuneration of Rs. 95/- per month. He is getting that sum from 1991 onwards. During the period 1970-1991 he was getting two nashies of cooked rice per day and salary of Rs. 6/- per month. Two nashies are equivalent to one-half of a Macleod seer.

Formerly he was getting three nazhies of cooked rice per day and 55 paras of paddy per year. Fifty-five paras will be equivalent to 550 seers. He further stated that the temple owned 3000 acres of paddy field and 200 acres of forest land. The temples was getting 26,000 paras of paddy per year apart from other income by way of cash. The present income is only Rs. 34091/- received from Government by way of annuity. He would say that every temple employee should receive at least Rs. 500/- per month which is the minimum required for a livelihood. According to him a substitute has to be appointed when he takes leave and the liability to pay his wages is on him,

14. R.W. 3 is the president of the 3rd respondent union which has 920 members. Ext. R3 (a) produced by him shows the remuneration received by the employees in the various temples. He is a Santhikaran in a temple in Malabar getting a monthly salary of Rs. 50/-. Even that amount was not paid for the past five years. He had to file a suit and obtain a decree, the fruits of which are yet to be realised.

15. R.W. 4 is a sweeper in Panamanna Sankaranarayana temple at Ottappalam. Hewas holding that job for the past 30 years. He is getting a monthly remuneration

of Rs. 50/ -. Fdrmerly the wages were paid in kind. He was getting 5 paras 7 edangazhies and 2 nazhies ofpaddy per month apart from an amount ofRs. 2.50 in cash.

16. R.W. 5 is a clerk in a temple inMalabar. He gets Rs. 300/- per month. In thattemple the Melsanthi is paid Rs. 450/ - and theKeeshsanthi Rs. 250/- per month. The Kasha-kams are paid Rs. 150/- and Rs. 100/-respectively. According to him the salary paidis not sufficient for his livelihood. He wantedminimum wages to be fixed for all the employees in the temples in Malabar.

17. The Santhikaran in Kunnumpillikavu (sic) temple, while examined as R.W. 6, stated that he is being paid Rs. 50/ - as salary and the other employees in the temple are paid Rs.30/- to Rs. 40/-. The Kariasthan whomanages the temple gets Rs. 150/. The wages paid, according to him, are insufficient to carry on their livelihood.

18. The President of the Kerala Kshethra Samrakshana Samithi, while examined as R.W. 8, has spoken about the various aspects relating to the conditions of the employees in the Malabar region as well as in the erstwhile Travancore and Cochin areas. He had occasion to travel from one end of the State to the other and had visited almost all the important temples. He stated that there is a drastic perceptible difference between the temples that exist in Travancore and Cochin parts of the Kerala State and that exist in Malabar region. His testimony can be summarised as follows:

The employees of the temples in the Malabar region are paid only very meagre minimal amounts as the salary. A Poojari gets Rs. 50/- per mensem and a sweeper gets Rs. 2/- per month in the temples in Malabar region. The other employees like Kazhakars and other persons are paid pittance as salary. The employees in Travancore and Cochin parts of the State are decently paid similar to government servants with pensionary benefits. The religious customs, practices and rituals in the temples in the whole State in all regions are almost similar or the same. There my be little difference here and there in the conduct of festivals' in certain temples. The same poojas are conducted for the deities in the temples whether they are at Parassala, the southernmost part of the State, or at

Kasaragod, the northernmost part. Regarding the worshipping public and their way of life and worship in the temples, they are all alike in all parts of the State.

19. The President of Malabar Kshethra Trustee Samithi as R.W. 7 spoke about the poor conditions of the employees and the temples in Malabar. He stated that competent and proper persons are not forthcoming for discharging the duties in many temples on account of poor wages paid to them. According to him the employees are half-starved or fully starved. They are paid very meagre sums. He stated that the temples in Malabar have a devastating look and thespiritual atmosphere itself has come to a vanishing point on account of lack of proper maintenance of the temples and the dissatisfaction among the employees. Even the annuity payable by the Government is not paid regularly. The department and its officers have totally neglected to apply their minds in this region. From his experience he would say that in most of the temples in Malabar, Poojaris and other people are getting a total remuneration of Rs. 100/- per month. There are certain temples in which poojaris and other persons are getting Rs. 50/- per month or even less.

20. The Secretary to the Government dealing with the Hindu Religious and Charitable Endowment Department who incidentally is the Finance Secretary, while examined as R.W. 9, stated that he is generally conversant with matters relating to the temples in Malabar. He is aware of the poor conditions of the employees of the temples in Malabar. That was the reason why a direction was given to the Commissioner of the Department to make a study of the temples in Tamil Nadu with a view to improve the temples in Malabar Government had also decided to constitute a welfare fund for the employees considering the poor financial conditions of the employees. In cross-examination he stated that he was aware that the employees in Malabar temples are getting only a small sum by way of salary. This matter had been brought to the notice of the Government several times. Government is aware of the difficulties experienced by the employees. How to solve the problem is yet to be determined.

21. Then there is the testimony of the Commissioner of the Department who has personal knowledge of the temples in Malabar and the conditions of service of the

employees. He stated that the salary paid to many of the temple employees in the Malabar area is very low. At the same time the temple servants under the Travancore and Cochin Devaswom Boards are getting reasonable salary like other Government servants. There is no difference in the discharge of work or manner or method of work between the employees under the Travancore and CochinDevaswom Boards and the temple employees in the Malabar area.

22. The evidence discussed in the foregoing paragraphs discloses the sad plight of the temple employees in the Malabar area, which includes the present Kasaragod District, who are getting only a very meagre amount as salary. The question arises whether they are entitled to reasonable and living wages and, if so, who is liable to pay the same. Though the Government and the Department are fully conscious of the pathetic condition of the employees, they are throwing up their hands in despair by stating that the liability is that of the trustees and not that of the Government. Can a direction be given to the Trustees of the various temples to revise the pay scales of the employees? Has the Government any responsibility in the matter of providing living wages to the employees? Can the Government disclaim liability to make the requisite provisions for the wages of the employees? These are some of the pertinent questions which require answer in this original petition.

23. The questions posed in the foregoing paragraphs have been answered by the Supreme Court in the decision in All India Imam Organisation v. Union of India, (1993) 3 SCC 584 : (AIR 1993 SC 2086). The relief sought for in that original petition was a direction to the Central and State Wakf Boards to treat the petitioners as employees of the Board and to pay them basic wages to enable to them to survive. The various Wakf Boards who got themselves impleaded in that original petition disputed the manner of appointment, the right to receive any payment and absence of any relationship of master and servant. The Wakf Board contended that they have nothing to do either with the appointment of the Imams or their working. Their jobs are stated to be honorary and are not considered as employment. Imams of the mosques in Punjab were being paid on the basis of their qualifications. There are three grades of Imams under the Punjab Wakf Board. They are: Imams Nazara (Mubtali grade): they are paid salary in the scale

of Rs. 280-20-580-25-830-30-980. The next higher grade is Imams Hafis (Wasti grade). They are paid salary inthe scale Rs. 445-20-645-25-895-30-1045. The highest grade is Imam Alim (Mumtali grade who are paid salary in the scale of Rs. 520-20-720-25-970-30-1120. Imams are also paid medical allowance at the rate of Rs. 30/- per month. Muazzins are paid Rs. 310/- per month. These scales were revised in 1992. Imams of all the mosques in Punjab, Haryana Himachal Pradesh come under the Punjab Wakf Board. They are being paid regularly and treated as regular employees. After referring to some of the provisions of the Wakf Act, the Supreme Court observed that the principle functionary to undertake the community workship is the Imam and the objective and purpose of every mosque being community worship and it being the obligation of the Board under the Act to ensure that the objective of the Wakf is carried on, the Board cannot escape from its responsibilities for proper maintenance of religious service in the mosque, Mosques are Wakfs and are required to be registered under the Act over which the Board exercises control. The Supreme Court turned down the argument that the Board has no control over the mosque. While observing that the absence of any provision in the Act or the Rules providing for appointment of Imam or laying down the conditions of their service may be because they are not considered as employees, the Supreme Court held that it cannot be disputed that due to change in social and economic set up, they too need sustenance.

24. On the question as to who should pay the remuneration of the Imams and how much, the Supreme Court observed that the Wakf Board cannot escape from its responsibility as the Mutawallis under Section 36 of the Act are under the supervision and control of the Board. The Imams are appointment by the Mutawallis. A contention was raised before the Supreme Court that the financial position of the Wakf Boards was such that they cannot meet the obligations of paying the Imams as they are being paid in the State of Punjab. Repelling this contention the Supreme Court held (AIR 1993 SC 2086 at p. 2090):responsibility of supervising and administering the Wakf, then it is their duty to harness resources to pay those persons who perform the most important duty, namely, of leading community prayer in a mosque, the very purpose for which it is created.'

25. In the light of the aforesaid observations, the Supreme Court made the following directions:

(i)The Union of India and the Central Wakf Board will prepare a scheme within a period of six months in respect of different types of mosques, some detail of which has been furnished in the counter affidavit filed by the Delhi Wakf Board.

(ii) Mosques which are under control of the Government shall not be governed by this order. But if their Imams are not paid any remuneration and they have no independent income, the Government may fix their' emoluments on the basis as the Central Wakf Board may do for other mosques in pursuance of our order.

(iii) For other mosques, except those which are not registered with the Board of their respective States, or which are not manned by members of Islamic faith, the scheme shall provide for payment of remuneration to such Imams taking guidance from the scale of pay prevalent in the State of Punjab and Haryana.

(iv) The State Boards shall ascertain income of each mosque, the number and naturfeof Imams required by it namely full time orpart time.

(v) For the full time Punjab Wakf Board may be treated as a guideline. That shall also furnish guideline for payment to part time Imam.

(vi) In all those mosques where full time Imams are working, they shall be paid the remuneration determined in pursuance of this order.

(vii) Part time and honorary Imam shall be paid such remuneration and allowance as is determined under the scheme.

(viii) The scheme shall also take into account those mosques which are small or are

in the rural area or are such as mentioned inthe affidavit of Pondicherry Board and haveno source of income and find out ways andmeans to raise its income.

(ix) The exercise should be completed and the scheme be enforced within six months.

(x) Our order for payment to Imams shall come into operation from 1st December, 1993. In case the scheme is not prepared within the time allowed, then it shall operate retrospectively from 1st December, 1993.

(xi) The scheme framed by the Central Wakf Board shall be implemented by every State Board.'

26. Relying on the decision of the Supreme Court in the Imam's case (AIR 1993 SC 2086) it is strenuously contended by the counsel appearing for respondents 3 to 16 that the temple employees in Malabar doing service in temples are also eligible to get living wages. According to the counsel the decision applies on all fours to the present case and they seek directions to be issued to respondents 1 and 2 on similar lines. In meeting this contention the learned Government Pleader would point out that the powers conferred on the Wakf Board under the Wakf Act are different and distinct from the powers conferred on the second respondent under the H.R. & C.E. Act. The temples in Malabar are owned by trustees and are under their management. The Department has only a supervisory control over the management of the temples. The appointments are made by the trustees themselves and wages are also paid by them. The function of the Department is only to see that the income is properly accounted for and is utilised for the welfare of the temple. It is therefore pointed out that the Supreme Court decision aforementioned has no application to the present case. On hearing counsel on both sides and on a perusal of the relevant provisions contained in the Wakf Act and the Hindu Religious and Charitable Endowment Act, we are of the view that there is practically no difference between the two legislations whereas the powers conferred on the Department under the Hindu Religious and Charitable Endowment Act are widerthan those conferred on the Wakf Board under the Wakf Act.

27. The Preamble to the Wakf Act, 1954 (Act 29/1954) states that it is an Act to provide for the better administration and supervision of the Wakfs. In the statement of objects and. reasons it is mentioned that the management of Wakfs, though it vests immediately in a Mutawalli, is a subject which requires the supervision of the State. The need for supervision has been felt and in addition to various

enactments dealing with the subject of charitable: endowments, the Musalman Wakf Act of 1923 was enacted for the whole of India. Enactments were introduced in some of the States also. The working of these Acts has brought out the necessity of amendments. Some of the States had no Act at all for the purpose. The necessity of a uniform and consolidated legislation resulted in the passing of the Wakf Act, 1954. The Preamble to the Madras Hindu Religious and Charitable Endowments Act, 1951 applicable to the Malabar Region of the State of Kerala states that it is an Act to provide for the better administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Madras of which Malabar region including the present Kasaragod District was a part then. The powers and duties of the Commissioner are embodied in Section 20 of the Act. Section 23 enjoins a duty on the Trustee Board to obey all lawful orders issued by the Government, the Commissioner, the Deputy Commissioner, the Area Committee of the Assistant Commissioner. The Trustees are bound to furnish to the Commissioner such accounts, returns, reports or other information relating to the administration of the institution. The trustee of a religious institution is authorised to incur expenditure as provided in Sub-section (1) of Section 30 of the Act. Sub-section (2) of that section stipulates that the trustee shall have due regard to such general or special instruction as may be given by the Commissioner or in the case of an institution over which an Area Committee has jurisdiction also by such Committee in incurring such expenditure. The Commissioner is also given powers under Section 31 of the Act to declare thatafter satisfying adequately the purposes of the religious institution, the surplus, if any, may be appropriated to religious, educational or charitable purposes. Under Section 45 of the Act the Deputy Commissioner in the case of any religious institution over which an area committee has jurisdiction and the Commissioner in the case of any other religious institution is given the power to suspend, remove or dismiss any hereditary or non-hereditary trustee or trustees thereof on the grounds mentioned therein. Though the trustee has got power to suspend, remove or dismiss any of the servants or office-bearers attached to a religious institution, the person so suspended, removed or dismissed is given a right under Sub-section (2) of Section 49 to appeal against that order to the Deputy Commissioner from whose decision an appeal lies to the Commissioner under Sub-section (3) of that

section. The Deputy Commissioner is given power under Section 58 to settle a scheme for a religious institution when he has reason to believe that it is necessary in the interests of the proper administration of a religious institution.

28. The provisions of the Act (1951) referred to in the foregoing paragraph indicate the wide powers conferred on the Department in the matter of management of temples and the Utilisation of the income therefrom. On a consideration of the various provisions contained in the Hindu Religious Endowment Act and the provisions in the Wakf Act, we see no difference in the matter of supervision and control of the religious institutions by the HR & CE Department (Department for short) and the Wakf Board in the case of Wakfs. On the other hand, the Preamble to the Hindu Religious Endowment Act suggests that the Act is intended not only for the better administration of the Hindu Religious and Charitable Institutions, but also their governance. By 'governance' is meant to rule with authority. The various provisions of the Act extracted in the foregoing paragraphs would indicate that the Department is the predominant force as far as the temples in Malabar are concerned. By looking at the purpose of the legislation and the various provisions contained therein weare of the firm view that the principles laid down by the Supreme Court in the Imam's case (AIR 1993 SC 2086) squarely apply to the present case also. The request of the counsel for respondents 3 to 16 for issue of directions similar to those issued by the Supreme Court in the Imam's case is therefore justified. We are of the view that similar directions are to be issued in this case also.

29. One of the contentions advanced by the learned Government Pleader is that the grievances of the employees can be redressed only consistent with the financial position of the Government. Even in the statement filed by respondents 1 and 2 it is mentioned that the problem can be solved only without spending any more Government funds. Government Pleader would therefore submit that a revision of the wages of the employees is not possible by utilising Government funds. The Supreme Court in Imam's case (AIR 1993 SC 2086) has in very clear terms observed that it is the duty of the Wakf Boards to harness resources to pay the Imams who perform the most important duty, namely, of leading community prayer in a mosque. It is not therefore open either to the Government or to the

Department to throw up their hands in despair and say that they are not possessed of sufficient funds to meet the demands of the temple employees. The Department which is authorised by the Act to administer and govern the endowments has thus a duty to harness the resources and to pay living wages as suggested by the Supreme Court in the Imam's case.

30. Even otherwise, the Government cannot disclaim the liability to pay living wages to the employees in view of the vesting of temple lands in the Government as on 1-1-1970 as well as the vesting of the private forests owned by the Devaswoms in the Malabar region. True, the Kerala Land Reforms Act provides for payment of annuity. It is in evidence that the final annuity statements had not so far been prepared. The vesting took place on 1-1-1970. Even two decades thereafter Government was not able to prepare the final annuity statement. The explanation of the Government appears to bethat particulars of records were not obtained from the various Land Tribunals, the Land Board and other authorities. The lands having been vested in the Government on 1-1-1970 and the Devaswoms deprived of their right to collect the rent from the tenants, Government owes a duty to get the annuity statement prepared and pay the annuity periodically without any delay whatsoever. The purpose for incorporating a provision in the Act for payment of annuity to the Devaswoms is defeated by such delay. It is no doubt pointed out that interim annuity statements are prepared and periodical payments are made. But that is hot sufficient to meet the expenses of the temples. Even the annuity payable under the Act will not be sufficient to meet the demands. One can visualise the situation when even that much amount is not being paid in time. Government do not appear to be serious on the aspect of preparing annuity statements or in the matter of providing annuity to the various temples which is not even the bare minimum that is required for the sustenance of the employees. We hope that 1st respondent would consider this matter with all seriousness and see that the final annuity statements with respect to the Devaswoms in Malabar area are prepared without any further delay.

31. In this connection it is appropriate to mention about the inadequacy of the amount to be determined as annuity. The annuity is fixed on the basis of the prices prevalent at the time of vesting i.e. on 1-1-1970. Even about 2 1/2 decades

thereafter that can be expected is the same amount. The increase in the prices of the commodities is not seen to have been taken note of by the authorities while preparing the annuity statement. We are not told about revision of annuity either every year or periodically. A periodical revision of the annuity is absolutely essential in order to meet the present demands of the temples. That is not a concession on the part of the Government, but only payment of the value of the commodities to which the Devaswoms are entitled. It is common knowledge that Devaswoms were getting rent in kind. Many of the Devaswoms were getting paddy as rent. The paddy thus received was utilised for theexpenses of the temple. When the properties had already vested in the Government, it only stands to reason that the Devaswoms should be paid the value of those commodities at the prevailing market rate. In other words, the annuity fixed by the Government has to be periodically revised. Since the final annuity statement has not so far been prepared, such preparation has to be made on the basis of the observations made by us in this judgment.

32. The claim for living wages is also based on the principle 'equal pay for equal work'. The employees in the temple administered by the Travancore and Cochin Deva-swom Boards are paid salary and other emoluments at the rates paid to Government servants. On the other hand, the employees of the temples in Malabar are getting only a pittance. This aspect has been spoken to by the witnesses examined on the side of respondents 3 to 16 and is also admitted by respondents 1 and 2 in their affidavits and statements as well as by RWs 9 and 10 at the time of evidence.

33. The Supreme Court in Randhir Singh v. Union of India, AIR 1982 SC879, observed that construing Articles 14 and 16 of the Constitution of India in the light of the Preamble and Article 39(d), it is clear that the principle 'equal pay for equal work' is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.

34. In Grih Kalyan Kendra Workers' Union v. Union of India, AIR 1991 SC 1173, the Supreme Court observed that it is not necessary to find out similarity by mathematics formula while considering the principle of equal pay for equal work. There must be a reasonable similarity in the nature of work, performance of duties, the qualification and the quality of work performed by them. The Supreme Court observed that it is permissible to have classification, but that must have a reasonable relation to the object sought to be achieved.

35. The principle of equal pay for equal work was again considered by the Supreme Court in State of Madhya Pradesh v. Pramod Bhartiya, AIR 1993 SC 286. The Supreme Court referred to the definition of the expression 'same work or work of similar nature' contained in Article (h) of Section 2 of the Equal Remuneration Act, 1976 enacted by Parliament to implement Article 39(d) of the Constitution and the obligation created by the convention concerning equal remuneration for men and women for work of equal value to which India is a signatory. The Supreme Court held that it would be evident from that definition that the stress is upon the similarity of scale, effort and responsibility when performed under similar conditions. It is also observed that since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the persons complaining of discrimination to establish their right to equal pay or the plea of discrimination, as the case may be. The Supreme Court reiterated that what is more important and crucial is whether the employees discharge similar duties, functions and responsibilities.

36. Viewed in the light of the principles enunciated by the Supreme Court in the aforementioned decisions and the evidence available on record, it is clear that the employees of the temples in Malabar are discriminated against in the matter of salary and other remunerations. That they possess the same qualifications and discharge same duties and responsibilities is not disputed by respondents 1 and 2 and has also been spoken to by the witnesses on the side of respondents 3 to 16. There has thus been a clear violation of the fundamental right of the employees in Malabar to get living wages. Under such circumstances the 1st respondent has a constitutional obligation to take necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right as held by the

Supreme Court in People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235 : (AIR 1982 SC 1473). In that case the Supreme Court was considering a public interest litigation to ensure observance of theprovisions of various labour laws in relation to workmen employed in the construction work of various projects connected with the Asian games. The Supreme Court held the Union of India, the Delhi Administration and the Delhi Development Authority to be under an obligation to ensure observance of the various labour laws by the contractors and if the provisions of any of the labour laws are violated by the contractors, the petitioners vindicating the case of the workmen are entitled to enforce this obligation against the respondents by filing a writ petition. Respondents 1 and 2 are therefore under an obligation to ensure that the employees in the various temples in Malabar are paid reasonable wages.

37. Yet another contention advanced on behalf of respondents 1 and 2 is that the temple funds are not made available to the Government and Government has thus no liability to make the payments. The learned Govt. Pleader has also attempted to highlight the difference between the Travancore and Cochin Devaswom Boards and the temples in Malabar. As observed by the Supreme Court in the Imam's case (AIR 1993 SC 2086), the 2nd respondent has to harness the resources for making payments to the various employees in the temples in Malabar. Here itself it has to be mentioned that the direction for payment is applicable not only to the 1269 temples under the administration and governance of the Department, but also the other public temples numbering about 2000 which do not come within the purview of the Act.

38. It is argued on behalf of respondents 3 to 16 that Government having taken over the forests owned by the Devaswoms cannot now disclaim liability to meet the expenses of the temples. Under Section 3(1) of the Kerala Private Forests (Vesting and Assignment) Act, 1971 the ownership and possession of all private forests in the State of Kerala stood transferred to and vested in the Government free from all encumbrances and the right, title and interest of the owner or any other person in any private forest shall stand extinguished subject to the provisions contained in Sub-sections (2) and (3) of that section. The owners were deprived of the forest land without compensation for their ownership. The Act was declared to

be unconstitutional and void by this court. On appeal the Supreme Court reversed that decision and upheld the legislation on the ground that the acquisition is for the purpose of agrarian reform (see State of Kerala v. Gwalior Rayon Silk ., 1973 Ker LT 896 : (AIR 1973 SC 2734). The purpose of the Act is stated to be one to provide for the vesting in the Government of private forests in the State of Kerala and for assignment thereof to agriculturists and agricultural labourers for cultivation. The Preamble reads:

'Whereas the private forests in the State of Kerala are agricultural lands;

And whereas the Government consider that such agricultural land should be so utilised as to increase the agricultural production in the State and to promote the welfare of the agricultural population in the State;

And whereas Government also consider that to give effect to the above objectives it is necessary that the private forests should vest in the Government;

Be it enacted in the Twenty-second Year of the Republic of India as follows : ..... '

The scheme of assignment of private forests is embodied in Section 10. The Government is empowered to assign op registry or lease the lands comprised in such private forest reserving such extent to agriculrists, agricultural labourers, members of scheduled castes and scheduled tribes who are willing to take up agriculture as means of their livelihood, unemployed young persons belonging to families of agriculturists and agricultural labourers and labourers belonging to families of agriculturists and agricultural labourers. Section 11 enjoins a duty on the Government to complete the assignment of the private forests or the lands comprised therein under Section 10 within a period of two years from the date of publication of the Act in the gazette, as far as may be. It is pointed out by learned counsel for respondents 3 to 16 that no land has been assigned to the persons mentionedin Sub-section (1) of Section 10 within the prescribed period of two years or thereafter. 'The inability to assign the land, according to the Government Pleader, is on account of the implementation of the Forest (Conservation) Act, 1980 Which prevents the use of forest lands for any non-forest purpose. Meeting

this contention learned counsel for respondents 3 to 16 draws attention to some of the observations made by His Lordship Justice Krishna Iyer in the concurring judgment in Gwalior Rayon Silk Manufacturing (Wvg.) Co.'s case (AIR 1973 SC 2734) (supra). It is observed that the programme held out in Section 10 viz. assignment of lands to agriculturists and the landless, if not implemented within a reasonable time or otherwise perverted to non-agrarian purposes, may give rise to judicial scepticism about the Government's bona fides and induce consequent remedial action. Drawing attention to the two year period for reserving forests and distri-buting'the rest written in the statute it is held :

'If the State, for ulterior ends, prevaricates or betrays the scheme by non-implementation or mis-implementation, an aggrieved party may relieve through a judicial post-audit.'

39. The writ petitioners in the case before the Supreme Court had voiced a complaint that their extensive forest lands are being confiscated without a paisa of compensation while the timber itself will be worth crores of rupees. Referring to the decision of the Supreme Court in Khajamian Wakf Estates v. State of Madras, (1971) 2 SCR 790 : (AIR 1971 SC 161) it is observed:

'Once we find the legislative area is barricaded by Article 31A it cannot be breached by Articles 14, 19 and 31 and judicial break-in is constitutionally interdicted.'

At the same time the Supreme Court hastened to point out that Article 31A is no charter of legislative freedom to refuse compensation altogether in every case. While observing that the court may not strike down a statute-for non-payment of compensation, it is held that the legislature is expected, except in exceptional socio-historical setting, to provide just payment for the deprived persons. TheSupreme Court observed that the present legislation dealing with extensive antiquated jemom rights relates to the exceptional category. At the same time it is observed that this is an area where not the court but the elector is the proper corrective instrument.

40. Relying on the observations of the Supreme Court extracted in the foregoing paragraphs it is strenuously contended that this court has to conduct a post-audit in view of the failure of the Government to implement the mandatory requirement under Section 10(1) of the Act within the period prescribed in Section 11. The question of post-audit postulated in the judgment of Krishna Iyer J. and the grounds available to respondents 3 to 16 to challenge the provisions of the Act in the light of those observations are beyond the scope of this original petition. Counsel appearing for respondents 3 to 16 do not also require an adjudication on those aspects. What they had requested is only a direction for payment of living wages to the temple employees based on the income which Government is getting from the forest lands. The lands having not been assigned in accordance with the provisions contained in Section 10 of the Vesting and Assignment Act, those lands are to be treated as lands held by the Government in trust for the respective Devaswoms, argues counsel. Whether Government are holding the lands as trustees or not does not require adjudication in this proceeding. At the same time it has to be stated that the owners were deprived of their properties without paying any compensation and the purpose of the legislation viz. agrarian reform has also been defeated, Government not having assigned the land to agriculturists and the landless. That Government was prevented from making the assignments in view of a subsequent legislation is no reason to hold that the purpose of the legislation has been fulfulled. Under such circumstances Government owes a duty to account for the income which they are getting from these forest lands. It has also to be noted that the dedication of these forest lands to the respective Devaswoms was in trust for the purposes of the temples and to meet the expenses in connection thereto. When that income is even now available to the.Government, it is only proper and reasonable to direct the Government to utilise the same for the purpose for which the lands were dedicated.

41. The Secretary of Kottiyoor Perumal Seva Sangham, the 16th respondent, stated that the Devaswoms owned 1,50,000 acres of forest land from which an annual income of Rs. 2 1/2 crores will be obtained. If that income is made available, it will go a long way to pay an increased salary for all the employees of the various temples. According to him a corporation was constituted in 1969 under the name 'Malabar Temple Development Corporation'. The witness was a member

of that Corporation which consisted of seven members. There was a proposal by the Corporation to consolidate the entire properties belonging to the temples in Malabar and then to carry on cultivation of rubber, pepper and other commercial products so that the income from those properties can be utilised for the temples. The proposal had to be abandoned in view of the Kerala Private Forests (Vesting and Assignment) Act.

42. The Commissioner of the HR & CE, Department as RW 10 admitted that the temple in Malabar owned vast areas of forest lands. The total extent may be 1 1/2 lakhs acres, According to him those properties would have fetched an annual income of Rs. 100/- to Rs. 200/- per acre. He would say that the income which the temples would have earned from these forest lands may be in crores. At present the temples have no income from forest lands. Counsel for I6th respondent brought to our notice a news item in Mathrubhoomi daily dt. 2-10-1993. The news item states that the income for the year 1993-94 from the forests is expected to be Rs. 125 crores. For the half year of 1992-93 the income was Rs. 46 crores. During the year 1993-94 the income expected from the forests was Rs. 67 crores as provided in the budget. These aspects are stated to have been divulged by the Chief Minister of Kerala in a press conference. Whether the income so stated represents the income from Devaswom lands alone or from all the forest lands vested in the Government is not clear. Whatever that be,the evidence of RW 1 that the Devaswom forests vested in the Government would fetch an annual income of Rs. 24 crores is not seen to have been seriously disputed by respondents 1 and 2. That much income at least is therefore available with the Government which can be utilised for payment of reasonable wages to the temple employees in Malabar.

43. In this connection a question may arise whether the income from those lands can be utilised only for the purpose of the temples to which those properties belonged or whether the income can be utilised for other temples as well. The direction issued by this court on the lines of the directions issued by the Supreme Court in Imam's case (AIR 1993 SC 2086) (supra) relates to provision for payment of reasonable wages to the employees in all the temples in Malabar and the Government has to harness the resources. The income from the private forests which vested in the Government under Section 3 of the Vesting and Assignment

Act is one such resource which can be utilised by the Government for that purpose. Needless to say that a direction that the income can be utilised only for the temples to which the lands belonged is therefore not warranted.

44. A contention is raised that the continued application of the Madras Act of 1951 to the Malabar District and that of the South Kanara District after the formation of the Kerala State is violative of Article 14 of the Constitution. The Supreme Court had occasion to consider this aspect in Shri Admar Mutt v. Commr., H.R. & C.E. Dept., AIR 1980 SC 1. The Supreme Court was considering the very same Act which was applicable to the South Kanara District of the erstwhile Madras State. After the formation of the Karnataka State, the South Kanara District formed part of that State from 1-11-1956. A question arose whether application of Section 76(1) of the Act to one District only viz. the South Kanara District of Karnataka State offends Article 14 of the Constitution. The Supreme Court held that the continued applications of laws of a State to territories which were within that State, but which havebecome a part of another State is not discriminatory since the classification on geographical considerations founded on historical reasons. While holding so, the Supreme Court observed that inequality is writ large on the face of the impugned statute in its application to the District of South Kanara only and that it is perilously near the periphery of unconstitutionally. It was made clear that if the Karnataka legislature does not act promptly and remove the inequality arising out of the application of the Madras Act of 1951 to the Distirct of South Kanara only, the Act will have to suffer a serious and successful challenge in the not distant future. The Supreme Court expressed hope that the Government of Karnataka will act promptly and move an appropriate legislation, say, within a year or so. In the concurrent judgment rendered by His Lordship Justice Shinghal, it is opined that it is necessary that the State Government should examine whether the contribution provided for by the Madras Act of 1951 is really necessary and advantageous for the proper administration of the religious and charitable institutions and endowments in the State as a whole, and if not, whether it is an inequality, and its continued applicability to the South Kanara District can be justified with reference to Article 14 of the Constitution.

45. A Division Bench of this Court had occasion to consider this aspect in M/s. United Konari Mills v. State of Kerala AIR 1993 Kerala 248. This Court was considering the constitutional validity of the Madras Commercial Crops Markets Act (Act 20 of 1993) as amended by Kerla Acts 15 of 1964 and 2 of 1981. In spite of the merger of the erstwhile Malabar District in the State of Kerala, the Act continued to apply to that District after the State re-organisation though it was not applicable to the remaining part of Kerala. The question arose whether the Act can have continued application to that part of the State alone. While holding that the classification need not be mathematical, accurate or scientific, perfect or logical, it was observed that different laws may apply to different parts of the State due to geographical or historical reasons. This isa permissible basis for classification and is not hit by Article 14 of the Constitution. This court stated that it is open to the State to reasonably classify persons for legislative purposes and deal equally with all persons belonging to a well-defined class. The twin requirements in that connection are held to be (1) the classification must be founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of that group, and (2) the differentia must have a rational relation to the object sought to be achieved by the Statute in question. It was held that the continued application of the Act to Malabar District even 37 years after the re-organisation amounts to inequality, but the Act was not declared inapplicable in view of judicial restraint. Following the Supreme Court decision in Shri Admir Mutt's case (AIR 1980 SC 1) (supra), the Division Bench clarified that if the legislature does not act promptly and remove the inequality arising out of the application of the Madras Commercial Crops Market Act to the Malabar District of the erstwhile Madras State only, the Act shall suffer a serious and successful challenge in the not distant future. This court granted a period of six months for the Government to act in the matter and to bring an appropriate legislation.

46. The facts of this petition disclose an identical situation. Even 37 years after the re-organisation of States and the merger of Malabar District in the State of Kerala, the Madras Hindu Religious Endowments Act applies to that District in respect of the religious institutions and endowments in that region whereas a different legislation viz. the Hindu Religious Institutions Act of 1950 govern the temple managed by the Travancore and Cochin Devaswom Boards. The inequality in the

wages paid to the emplyees of the temples in the respective regions has been highlighted in the foregoing paragraphs. This may be due to geographical or historical reasons. For those reasons different laws may apply to different parts of the State. But no attempt was made to remedy the inequality. The classification of the temple employees in the two regions into different categories is notfounded on intelligible differentia. Persons in the same category discharge the same functions and possess the same qualifications throughout the State. The differentia has thus no rational relation to the object sought to be achieved by the statute in question viz. the proper administration and governance of the temples in Malabar and well being of the religious institutions and endowments coming under the purview of the Hindu Religious and Endowments Act. As observed by the Division Bench in United Kopari Mills' case (AIR 1993 Kerala 248) (supra) inequality is clearly writ large on the face of the Act in its application to the erstwhile Malabar region and 'is perilously near the periphery of unconstitutionally'. Even then this court did not declare the Act as inapplicable to the erstwhile Malabar District, but clarified that the Act shall suffer a serious and successful challenge if the legislature does not act promply and remove the inequality arising out of the application of the Madras Commercial Crops Markets Act. Following the decision of the Supreme Court and agreeing with the views expressed by the Division Bench of this Court, we hold that inequality is writ large on the face of the Madras Hindu Religious and Charitatble Endowments Act in its application to the former Malabar District. In case that inequality is not removed by appropriate legislation, the Act is likely to suffer a serious and successful challenge. We need not therefore over-emphasise the requirement of a legislation removing this inequality and enabling the temple employees of Malabar to get reasonable wages more or less on the same lines as those of the employees under the Travancore and Cochin Devaswom Board.

47. How can the inequality be removed is the next question that requires consideration. Government was not unware of the grievances of the temple employees in Malabar or the pitiable conditions in which they discharge their duties. Government had also felt the necessity of unification of the laws relating to the administration of Hindu relgious institutions and endowments in our State. As early as 1961 Government of Kerala constituted a committee to go into the question ofunifying the laws. The reasons for theappointment of the committee are

stated inthe order G.O. (MS) 772/Revenue dt. 12-8-1961. The order reads:

'The question of the unification of the Devaswom Acts in the Travancore-Cochin and Malabar areas has been engaging the attention of Government. The structural setup, management and condiditions of the Devaswoms and the nature of their assets in the two areas are different. In the Travancore-Cochin area the Devaswom Boards are autonomous units. The Travancore Devaswom Board is in receipt of ah annual grant for the maintenance of Devaswom under its control, The Cochin Devaswom Board, on the other hand, has to manage the temples under its control from the income of their properties. The position in the Malabar area is quite different. A few of the temples are directly under the control of the Commissioner, Hindu Religious and Charitable Endowments Administration Department. But most of the Devaswoms are managed by trustees individually and in groups under the supervisory control of the Department for Hindu Religious and Charitable Endowments.'

'Government propose to introduce a common Act applicable to the entire State for the proper management and functioning of the Deveswom and to maintain effective control over their funds. Government with a view to achieve the above object have decided to constitute a Committee to go into the whole question in all its details.'

48. The committee consisted of seven members of ' which Sri K. Kuttikrishna Menon, former Advocate General of Madras, was the Chairman. The terms of the reference as incorporated in the report of the committee Ext. Rl are:

1. Possibility of a common legislation applicable to the whole of Kerala State for the administration of Hindu Religious and Charitable Endowments of a public nature.

2. Nature of control to be exercised by Government over the administration of the aforesaid endowments.

3. The adminstrative set-up to be constituted for the purpose of management of the Endowments.

4. Utilisation of Endowment properties and their income.

5. Feasibility of a special enactment for the administration of some of the endowments in the State on the lines of the Thirupathi Devasthanam Act.

6. To suggest generally ways and means for the better and more useful administration of the Endowments and their funds and properties in the State.

The committee interviewed several persons from one end to the other end of the State and had also perused several documents. The report was submitted on 27-1-1963. Two decades later Government appointed a one man commission for the same purpose. Sri K.P. Sankaran Nair, who had been the Law Officer of the Travancore Devaswom Board for a period of ten years, was appointed as the commissioner. In the order of appointment annexed at page 192 of his report Ext. R 3 the reason for the appointment is stated to be the necessity of unification of the Devaswom Acts in the Travancore and Cochin area and the law applicable to the Malabar region. It is also stated in the order that this matter had been under the consideration of the Government for some time past. Along with the report containing the suggestion for the unification of the laws, the commission was also directed to formulate a scheme for the proper management of the Devaswoms without incurring additional expenditure and the nature of the control which the Government can have over the Devaswoms apart from the resources in order to meet the increasing demands. After interviewing several persons from all walks of life and undertaking extensive tours and perusing several documents, the commission submitted its report on 23-4-1984. No action was taken on this report either. Both Kuttikrishna Menon Committee Report and Sankaran Nair Commission Report are gathering dust in the archives of the Secretariat at Thiruvananthapuram. R.W. 9, the Secretary to Government dealing with H.R. and C.E. Department, isaware that both the commissions have proposed a unified Board in the Kerala State except certain important temples. Still he would say that the records relating to Kuttikrishna Menon Committee Report could not be traced out and there is no file to show that any follow up action was taken on Sankaran Nair Commission Report. According to him the files might have been destroyed, an easy and convenient way of disposal of files.

49. It cannot therefore be said that Government was unaware of the necessity of bringing legislation unifying the laws applicable to the various regions. The necessity of bringing in a unified legislation and the formation of an apex board had been under the consideration of the Government for the past three decades. A bill under the name 'Kerala Hindu Religious and Charitable Endowment Bill' is seen to have been prepared in 1972. Ext. R2 is a copy of that bill which contains 208 sections. From the letter appended to the copy of the bill it is seen that a copy had been forwarded to the 2nd respondent on 1-2-1973. Nothing was heard thereafter of the bill and R. Ws. 9 and 10 are not in a position to say anything about that bill. Ever since the submission of the report by Kuttikrishna Menon Committee, various organisations headed by eminent persona-lilies had made periodical representations for improving the conditions of the temples in Malabar. In 1964-65 a committee under the name 'Kshethra Udharana Committee' was formed under the Presidentship of late Shri K.p, Nessa Menon, the then editor of the Mathrubhoomi. R.W. 1 was a member of that committee. In 1968 a committee headed by Sri Kelappaji, the revered leader of Kerala, had gone to Delhi to meet the then Home Minister to apprise him and to bring home the urgent necessity to improve the conditions of Malabar temples and also the living conditions of the employees therein. R.W. 1 was the Secretary of the delegation. He stated that on instructions from the Government of India a bill was drafted known as 'Malabar Devaswom Bill' sometime in 1975. But nothing took shape in pursuance to the said bill. He has also spoken about the constitution of Sankaran Nair Commission and the report submitted by him. A corporation known as

'Malabar Temple Development Corporation' was constituted in 1969 to improve the finances of the Malabar temples and their affairs. The witness was a member of that Committee which consisted of seven members. The Corporation proposed to consolidate the entire properties belonging to the temples in Malabar admeasuring 1 1/2 lakhs acres and then to carry on cultivation of rubber, pepper and other commercial products so that the income so obtained from these properties could be utilised for the temples. The witness stated that this proposal could not be given effect to and had to be abandoned in view of Kerala Private Forests (Vesting and Assignment) Act. In spite of the sincere efforts made by eminent personalities and even after the submission of the report by Kuttikrishna

Menon Committee and Sankaran Nair Commission, no concrete steps were initiated by the Government for the formation of a unified Devaswom or for the redressal of the grievances of the the temple employees in Malabar. The witness would therefore say that a Board has to be constituted for the management of the temples in Malabar. Some of the other witnesses examined on the side of respondents 3 to 16 have also pointed out the necessity of a separate Devaswom Board for the temples in Malabar. R.W. 3, a functionary of 3rd respondent Union, has suggessted an enacted law for the entire Malabar temple employees inclusive of Guruvayoor temple. The President of the Kerala Kshethra Samrakshana Samithi as R.W. 8 suggested that there should be a new legislation to protect and safeguard the Hindu worshipping public in the Malabar area. According to him there should be an independent Devaswom Board for this area and it is desirable to have an apex Board under which all the three Boards can function. The necessity of formation of a separate Board for the temples in Malabar was highlighted by Sri Raman Bhattathirippad, the then President of the Travancore Devaswom Board, in the news item published in the Hindu daily dated 31-12-1991, about which also reference was made by this court in the order dated 31-1-1992.

50. The documents exhibited in thispetition and the oral evidence of the witnesses disclose the lethargy on the part of the authorities to bring in a legislation to ameliorate the poor working conditions of the temple employees in Malabar and for the uplift of the temples in that region. The matter had been under the consideration of the Government for more than three decades, but nothing concrete had taken shape till now. Reference has already been made to a bill prepared in 1972 and R.W. 1 has also spoken about a bill prepared in 1975. Two commission reports are available before the Government. Ext. Rl is the first of its kind. But we have Ext. R.3 report of Sankaran Nair Commission who had the benefit of the earlier report Ext. Rl as well as the report of Sir C.P. Ramaswamy Iyer Commission. A perusal of Sankaran Nair Commission Report shows that he had considered the matter in all its details and in all perspectives. Predictable suggestions are seen made in Ext. R3 regarding the formation of the various committees for the management of the various temples upto the apex body controlling the entire matter. Though the report was submitted a decade back, no

file is seen started even according to the Secretary, R.W. 9. While bringing in the legislation as suggested in the foregoing paragraph to remove the inequality pointed out by us, Ext. R3 report may be of considerable assistance to the Government. We hope that Gvoernment would consider Ext. R3 report in all earnestness and seriousness and take note of the valuable suggestions and recommendations made by him for the formation of a unified body for the management of all the temples in our State and also the formation of committees for the management right from the temples at the village level upto State level.

51. On behalf of the respondents 1 and 2 it was argued that formation of a Board for the temples in Malabar is not feasible since the temples are owned by private individuals or Trusts. Unlike the temples in Travancore and Cochin which are owned by the State, the temples in Malabar are not owned by the State, but by the Trustees. Second respondent has only a limited power of administration and governance of the temples. The income from the properties owned by the temples aswell as offerings are collected by the Trustees through persons appointed by them and the expenses are also met out of such income. The role of the Department is only to oversee the collection of income and incurring of expenditure. The contention that the ownership of the temples with the trustees stands in the way of Government taking control of the temples is unsustainable in view of two Full Bench decisions of this Court relating to Guruvayoor Devaswom viz. Krishnan v. Guruvayoor Devaswom Managing Committee 1979 Ker LT 350 : (AIR 1978 Kerala 68) and Narayanan Namboodiri v. State of Kerala 1985 Ker LT 629 : (AIR 1985 Kerala 160). In both the decisions this court held that the Guruvayoor Temple belongs to the denomination of Hindus having faith in temple worship. The denomination has all along been recognised as being the body in whom ultimately rests the right to maintain and administer the temples and the hereditary trustees have been functioning only as its representatives, their actions being liable to be called in question by the denomination either by proceedings before the statutory authorities constituted under the Madras Hindu Religious Endowments Act or before the civil court by institution of suits as provided for in the said Act. In Narayanan Namboodiri's case (AIR 1985 Kerala 160) (supra) the Full Bench held Sections 3 and 4 of the Guruvayoor Devaswom Act, 1978 to be not violative of Article 26 of the Constitution of India. It was held that the provisions

of Section 4 clearly indicate that a committee to be constituted should consist of members belonging to the denomination of Hindus having faith in temple worship. The Full Bench considered section by section of the Guruvayoor Devaswom Act, 1978 and struck down only Section 32 of the Act and a portion of Section 33. The remaining provisions were held valid and are found to be perfectly within the competence of the State Legislature. The Guruvayoor Devaswom had been under the purview of the Hindu Religious Endowments Act at the time when the first Guruvayoor Devaswom Act was introduced in the legislature. A scheme has also been framed earlier under that Act in respect of the Guruvayoortemple. Among the temples administered by the Department, schemes had been approved in respect of some. There is thus no legal bar in the Government constituting a Board for the temples of Malabar and in constituting committees for the management of the temples under that Board, the ownership of the temples being with the denomination and the hereditary trustees are functioning at present only as the representatives of the denomination.

52. As held by the Full Bench in Narayanan Namboodiri case (AIR 1985 Kerala 160) (supra) the actions of the trustees are liable to be called in question by the denomination. When the position of the trustees vis-a-vis the denomination has been held to be only in the capacity as representatives, the denomination can always challenge action of the trustees. The action of the trustees in not paying reasonable wages and in not properly maintaining the temples is challenged in this petition. Even if 't be that the trustees are unable to perform their functions on account of the paucity of funds, the properties of the temples having been vested in the Government under the Land Reforms Act and the Private Forests (Vesting and Assignment) Act, the legislature is competent to bring in a legislation on the lines of the Guruvayoor Devaswom Act for all the temples in Malabar. The question whether there should be a separate legislation for Guruvayoor and other important temples is a matter which requires consideration while bringing a legislation for this purpose. In this connection it is pertinent to refer to the recommendation of Kuttikrishna Menon Committee at page 53 of Ext. Rl that it is enough if special provisions are included in the unified Act regarding certain important temples wherever they are found necessary and that no separate legislation is necessary in respect of any of the institutions in the State. The view

of the committee that the system of management by hereditary trustees seems to have outlived its utility in Malabar has also to be taken note of. The result is that when a special legislation can be brought for the management of the Guruvayoor temple and its properties which also had been under thepurview of the Hindu Religious Endowments Act, ther is no legal bar in bringing a legislation on similar lines for the management of all the remaining temples in Malabar which are under the administration and governance of the Department as well as all the other public temples even though they do not come under the purview of the Act.

53. Having found that temple employees in Malabar area are facing financial problems and that there is no welfare legislation for the benefit of the employees. Government intended to provide welfare benefits to the temple employees governed by the Madras Hindu Religious and Charitable Endowments Act by introducing the Malabar temple employees welfare fund scheme. A notification was issued to this effect by G.O.(MS)276/93/lRDdated 25-6-1993. The scheme contemplated a fund created for its implementation towards which the employees are also to contribute. The Welfare Fund shall consist of contributions from the employees, contribution from the temples, donations from voluntary organisations, institutions and individuals, grant from Central and State Governments and from registration fee of the members. Provision is made in the scheme for payment of pension and gratuity as well as medical benfit and financial aid for the marriage of the daughters of the employees. Provision is also made for payment of a maximum amount of Rs. 1000/- to any member who requires hospitalisation on account of any accident occurring while on duty. Ext. R5 is the notification issued by the Government in this behalf. The scheme envisaged thereunder is no doubt beneficial to the employees, but that is not sufficient to ameliorate their present grievances or to enable them to have a sustenance at present. The constitution of the welfare scheme is therefore no reason to deny the employees living wages as suggested in the foregoing paragraphs. We make it clear that it will be open to the Government to proceed with the welfare scheme which can only be in addition to and not substitute for the redressal of the present grievances voiced by the employees.

54. What remains to be considered iswhether an apex body should be constituted for the two Devaswom Boards viz. Travancore and Cochin and the Board to be constituted for the temples in Malabar. We have already found that the distinction attempted to be made by the learned Government Pleader between the temples in Travancore and Cochin and the temples in Malabar is one without a difference, since the ownership of all the temples in Kerala ultimately vests with the denomination, the Hindu public in the State. The necessity of unification of the Devaswom Acts in Travancore, Cochin and Malabra areas was felt by the Government as early as 1961 and it was to achieve that object that Kuttikrishna Menon Committe was constituted. That report was kept in cold storge ever since its submission in 1963. Two decades later another commission was appointed. In the order of appointment it was stated that the matter of unification had been under the consideration of the Government for some time past. That report also is lying in slumber for the past ten years in one of the almirahs of the Secretariat. A bill was also prepared in 1972. But nothing was heard later. According to R. W. 1 a bill was prepared in. 1975, but a copy of the same was not exhibited. In these circumstances it is not open to the Government to pretend either that they are unaware of the necessity for unification or that they area not possessed of the requisite materials to bring in a proper legislation. As observed earlier, there are two well studied reports. We are referring to Kuttikrishna Menon Committee Report and Sri Sankaran Nair Commission Report. Both the reports were prepared after visitng several temples in the State and after interviewing several persons connected with the temples including religious dignitaries. What is required is only the will to , bring in a legislation for the unification of the Devaswom Acts in the three regions viz. Travancore, Cochin and Malabar in order to have a common Board controlling and managing all the affiars of the temples in the State. We hope the Government would give its serious consideration on this aspect in the light of the two reports referred above.

55. While considering the nomination ofpersons to the Board or Committee which the Government will be forming to manage the temples in Malabar and the apex body for all the three regions viz. Travancore, Cochin and Malabar, we are sure that Government will look into the recommendations of the High Power Commission in the matter of illegalities, irregularities and embezzlements in the

Devaswom Boards of Travancore and Cochin appointed by this Court in O.P. No. 3821/ 1990 and accepted in the order dated 10-4-1992. The relevant recommendations are those contained in Sub-clauses (3) and (4) of Clause 38 in Chapter 5 of the Report. They are:

(3) De-politicization of the Board and its working is a matter of highest priority.

(4) Ministers of the Government and members of the Legislature charged with the responsibility of nominating members of the Board should not nominate persons identified as belonging to or having an affiliation with political parties. Only eminent persons who are held in high esteem by the public and who have proven integrity should be nominated. It will be an added advantage if they have proven administrative ability or have background in the financial or legal matters.

56. We are of the firm view that much of the ills of the present Travancore and Cochin Devaswom Boards could be got over on implementing the aforementioned recommendations of the High Power Commission which can also be taken into account while nominating members of the Malabar Devaswom Board or the Committee for management of temples in Malabar and the apex body which the Government may constitute in future. ;

57. Before concluding we like to stress on the importance of temples which are necessary for the spiritual evolution of men and realisation of God. Of the three 'margas' or paths for realisation of the Supreme Reality, the Bakthi marga is one of devotion which could be followed by ordinary people without much difficulty. The ordinary human being requires a manifested form of the infinite for devotion and worship and he wants something to hold on that accounts for the practice of Bhakthi maiga of which image worship has become an essential ingredient. In the Hindu way of life image worship has therefore considerable importance.

58. While answering criticism against image worship Dr. Radhakrihnan says:

'Man is anthropomorphic and is inclined to conceive God in vivid and pictorial form. He cannot express his mental attitude except through sysmbolism and art. However inadequate the symbols may be as expressions of the real, they are

tolerated so long as they help spirit in its effort after the Divine. The symbol need not be superseded so long as it suggests the right stand point. Realising as it does the force of the lower forms of worship. Hinduism has developed a religious atmosphere permeated by the highest philsophic wisdom as well as symbolic worship round which much glorious art has gathered. It has room for all men of all grades of cultural equipment and religious instinct. It is idle to stifle the impulses of the child by breaking its playthings, simply because we are grown up and do not find any need for them.'

59. As stated by Swami Vivekananda images are found in some form or other all over the world. Swamiji said:

'With some it is in the form of a man -- which is the best form.'

60. Preservation of the temples is there-lore necessary for the spiritual uplift of the ordinary people who follow the Bhakthi marga. The temples in Kerala are noted for their sanctity and purity. The important temples in this State and in particular Guruvayoor and Sabarimala are visited by piligrims from all over the country who include persons from all walks of life. The attraction as one could see is the sanctity and purity of the atmosphere in the temples in this part of the country. This was noitced by Mahatma Gandhi who had occasion to vistit some of the temples after the Travancore Temple Entry Proclamation. Gandhiji said:

'I certainly left Travancore with spiritual treasures that I have newly discovered. For,what I saw there was beyond my expectation and more than delighted my heart. The temples gave me a leftier and nobler idea of temples and temple worship. I had visited temples before in North India but I had not done so in a devout spirit and they had failed to stir me. But the majestic Travancore temples spoke to me. Every carving, every little image, every little oil lamp had a meaning for me. These temples are so many bridges between the unseen invisible and indefinite God and ourselves who are infinitesimal drops in the infinite ocean. We are of the earth, earthy, and we are not satisfied with contemplating the invisible God. Somehow or other we want something which we can touch, something which we can, see, something before which we can kneel down .....

If you will approach these temples with faith in them, you will know each time you visit them, you will come away purified and with your faith more and more in the living God.'

61. The necessity to maintain the temples, to perform the rituals therein and to preserve the same for all time need not therefore be over-emphasised. In order to maintain the sanctity and purity of the atmosphere in the temples, the employees are to be given fair wages and then and then alone can one expect them to perform their duties with all sincerity and earnestness and to the best of their effort. We may not be understood to mean that the employees are not performing their duties properly at present, but we only say that they are constrained to discharge their duties without getting the bare necessities required for their sustenance. When they are provided with fair wages sufficient for their sustenance, one could expect them to perform their duties in a more efficient and more elegant manner which will add to the purity and sanctity of the atmosphere in the temples. So long as temples are essential for the spiritual evolution of man as they are necessary aid in the Bhakthi marga and realisation of the Supreme Self, we owe it a duty to preserve them for posterity. That can be achieved only if proper and reasonable wages are paid to the employees and the properties of the temples are managed in a proper manner by proper persons.

62. For the reasons aforementioned we allow the petition and issue the following directions:

1. The Government of Kerala and the Hindu Religious and Endowment Department shall prepare a scheme within a period of six months in respect of the temples in Malabar region including Kasaragod district under the administration and governance of the Department as well as other public temples which do not come under the purview of the Act;

2. First respondent shall fix the reasonable remuneration to be paid to the various employees in the temples in Malabar;

3. In fixing such reasonable remuneration the Government may take guidance from the scale of pay and other allowances paid to similar employees under the

Travancore and Cochin Devaswom Boards;

4. The scheme shall also take into account all public temples in Malabar irrespective of the fact whether they are big or small and whether they are under the administration of the Department or not;

5. Respondents 1 and 2 shall find out the ways and means to raise the income of the temples for the purpose of such payment;

6. The first respondent shall prepare the final annuity statements in respect of the temples within a period of one year and theannuity on that basis shall be paid without further delay;

7. The first respondent shall consider the requirement or revision of annuity periodically in accordance with the rise in price of the commodities and the annuity should be revised on that basis;

8. First respondent shall ensure utilisation of the income which they are getting from the forest lands owned by the Devaswom in Malabar which got vested in the Government under Section 3(1) of the Private Forests (Vesting and Assignment) Act;

9. The first respondent shall, though not liable to pay such income to the owners to

whom the lands belonged, pool the income in a common fund to be utilised for the temples in Malabar including the wages payable to the employees thereunder:

10. The scheme to be framed by the first respondent shall be implemented by the second respondent within a period of one year from this date:

11. The order for payment of reasonable wages to the temple employees shall come into operation from 1st January, 1995.

12. In view of our finding that inequality is writ large on the face of the Madras Hindu Religious and Charitable Endowments Act in its application to the former Malabar District, the Act is likely to suffer a serious and successful challenge in case that inequality is not removed by appropriate legislation. We grant a period of

one year for this purpose.

13. We direct the Government to consider the formation of a Board for the temples in Malabar and a unified Board for all the regions viz. Travancore, Cochin and Malabar on the lines of the recommendations made by Kuttikrishna Menon Committee and Sankaran Nair Commission.

We part with the case on the hope that Government would give serious consideration to the various aspects involved in this petition and considered by us in detail and implement the directions issued by us and see that the grievances of the temple employees in Malabar are redressed to a considerable extent and that the temples in Malabar are also run in a proper manner by a competent body. We expresse our gratitude to the learned Government Pleader Sri Sankara Menon who appeared for respondents 1 and 2 and the counsel who appeared for respondents 3 to 16 and in particular to S/Sri Govind Bharathan, A. P. Chandrasekharan and P. Santhalihgam for their able assistance.

Balasubramanyan, J.

63. I am in respectful and complete agreement with the conclusions arrived at and the directions issued by my learned brother. But I wish to add a few words on one of the aspects that would support our conclusion that there is an obligation on the State to provide for theupkeep and maintenance of the temples in the Malabar District of the State which are under the control of the authorities under the Madras Hindu Religious and Charitable Endowments Act.

64. Quite a few of the temples owned extensive agricultural lands and/or large tracts of forest lands. They were generally dedicated to these temples by local chieftains or leading families of the locality in the earlier days. These lands were managed by the Ooralans of various temples. The Ooralans were the trustees. The general nature of these properties dedicated to the various temples and the status of the Ooralans are indicated by the Privy Council in the decision reported in Rajah Vurmah Valia v. Ravi Vurmah Kunhi Kutty, (1876-78) ILR 1 Mad 235 which related to a dispute regarding the properties of the Kottiyoor Devaswom, one of the Devaswoms whose forests have now vested in the State. The

Headnote of the said decision reads:

'The founder of a Hindu temple who provides that the Urallers (trustees or managers) thereof for the time being, shall be the Karanavans (chiefs) of four distinct families, may be supposed to have established this species of corporation with the object of securing the due performance of the worship and the due administration of the property of the temple by the instrumentality of a class of persons whom he has selected on grounds of special fitness; and it cannot be supposed that he intended to empower such trustees at their mere will to transfer their office and its duties, with all the trust property, to a person unconnected with the families from which the trustees were to be taken, to be used according to his discretion. There is no authority under the general principles of Hindu law for holding that such trustees have power to make such a transfer'.

From the income from these forests and the other lands owned by the temples and managed by the Ooralans, the expenditure of the temples were being met.

65. The agricultural lands held by these temples were mostly outstanding on tenancy.

The Kerala Land Reforms Act, Act 1 of 1964 which came into force on 1-4-1964 conferred fixity of tenure on the tenants and enabled the tenants to pay the fair rent as defined by that Act in the place of the contract rent payable. By this, the income of the temples receiving rent got considerably reduced. Then by virtue of the provisions of the Kerala Land Reforms Act, as amended by Act 35 of 1969, these temples lost the rental income from the said agricultural lands in view of the vesting of the landlord's rights in the State. No rent was payable by the tenants to the landlords from the appointed day, viz. 1-1-1970. But the Act provided for payment of annuity and several provisions were made in that behalf in Sections 66 to 71 and Section 72N of that Act. My learned brother has referred to the delay in determining the annuity payable in most of the cases. The deprivation of rent reduced most of the temples in Malabar area to penury and even led to the discontinuance of daily poojas and nivedyams in some of the temples.

66. It is while most of the temples were limping along thus, that the Kerala Private Forests (Vesting and Assignment) Act, Act 26 of 1971 was enacted depriving these temples of their forest lands as well. That Act had a worse impact than the Kerala Land Reforms Act in that the forest lands got vested in the Government free from all encumbrances without paying any compensation therefor. Section 3 of the Act 26 of 1971 which provided for the vesting read thus :

'Private forests to vest in Government. --(1) Notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, but subject to the provisions of Sub-sections (2) and (3), with effect on and from the appointed day, the ownership and possession of all private forests in the State of Kerala shall, by virtue of this Act, stand transferred to and vested in the Government free from all encumbrances, and the right, title and interest of the owner or any other person in any private forest shall stand extinguished.'

(rest of the sub-sections omitted as unnecessary)This vesting resulted in the devaswoms being deprived of vast extents of forest lands from which they were getting considerable income without any compensation. This second and more frontal blow to the finances of the various temples has led to a situation where these temples are in abject penury and their employees are being paid a pittance compared to other temple employees in the erstwhile areas of Travancore and Cochin in the State.

67. The Kerala Private Forests (Vesting and Assignment) Act was necessarily challenged before court. This court struck down the said Act as unconstitutional. But in appeal, the Supreme Court, in the decision reported in State of Kerala v. Gwalior Rayons 1973 Ker LT 896 : (AIR 1973 SC 2734) reversed the decision of this Court and upheld the validity of the Act on the ground that the Act was a piece of agrarian reform and hence was immune from attack as violative of Articles 14 and 19 of the Constitution in view of Article 31A of the Constitution. The Supreme Court relied on Sections 10 and 11 of the Act to find that the Act was ameasure of Agrarian Reform. Sections 10 and 11 of Act 26 of 1971 read as follows :

'10. Assignment of private forests. -- (1) The Government shall, after reserving such extent of the private forests vested in the Government under Sub-section

(sic) of Section 3 or of the lands comprised in such private forests as may be necessary for purposes directed towards the promotion of agriculture or the welfare of the agricultural population or for purposes ancillary thereto, assign on registry or lease to --

(a) agriculturists;

(b) agricultural labourers;

(c) members of Scheduled Caste and Scheduled Tribes who are willing to take up agriculture as means of their livelihood;

(d) unemployed young persons belonging to families of agriculturists and agricultural labourers, who have no sufficient means of livelihood and who are willing to take up agriculture as means of their livelihood.

(e) labourers belonging to families of agriculturists and agricultural labourers, whose principal means of livelihood before the appointed day was the income they obtained as wages for work in connection with or related to private forests and who are willing to take up agriculture as means of their livelihood, the remaining private forests or the lands comprised in the private forests on such terms and subject to such conditions and restrictions as may be prescribed.

(2) The Government may, by notification in the Gazette, delegate their power under Sub-section (1) to any officer of the Government or any class of officers of Government, subject to such restrictions and control as may be specified in the notification. .

(3) The extent of private forests or lands comprised in private forests which may be assigned to each of the categories of persons specified in Sub-section (1) and the order of preference in which assignment may be made shall be such as may be prescribed.

1. Assignment to be made within two years. -- Assignment of the private forests or the lands comprised therein under Section 10 shall, as far as may be, be completed within two years from the date of publication of this Act in the Gazette'.

This scheme of assignment to agriculturists, agricultural labourers, members of scheduled castes and scheduled tribes and others for the purpose of agriculture was held to be sufficient to preclude the constitutional challenge. But the Supreme Court took care to point out that the immunity provided by Article 31A of the Constitution is not a blanket one and that in case the State failed to implement the scheme of Section 10 of the Act it would be then open to the concerned persons to raise the question once again. Quoting the following observations of Sikri, C.J. in Kannan Devan's case (1972) 2 SCR 218 : 1972 Ker LT 377 : (AIR 1972 SC 230) reading:

'If the State were to use lands for purposes which have no direct connection with the promotion of agriculture or welfare of agricultural population the State could be restrained from using the lands for those purposes. Any fanciful connection with these purposeswould not be enough'.

the Supreme Court observed :

'If the State, for ulterior ends, prevaricates or betrays the scheme by non-implementation or misimplementation, an aggrieved party may relieve through a judicial post-audit'.

The position therefore is that if the State were not to implement the scheme envisaged by Section 10 of the Vesting Act, it would be open to the erstwhile owners of the private forests to raise claims before the courts in respect of those lands.

68. Considering the need for maintaining the ecological balance, the need to protect the environment from deterioration and to prevent further deforestation. Parliament enacted the Forest (Conservation) Act, 1980, Act 69 of 1980 with effect from 25-10-1980. The said Act prevented the use of forest land for any non-forest purpose notwithstanding any State law and prevented the States from making an order directing the user of the forest land for a non-forest purpose. Section 2 of the said Act reads:

'Restriction on the dereservation of forests or use of forest land for non-forest purpose. -- Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing --

(i) that any reserved forest (within the meaning of the expression 'reserved forest' in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose.

Explanation:-- For the purposes of this section 'non-forest purpose' means breaking up or clearing of any forest land or portion thereto for any purpose other than reafforestation.'

The Explanation indicates that the breaking up or clearing of any forest land or portionthereto for any purpose other than reafforestation would be a non-forest purpose within the meaning of the section. Obviously, the provisions of Act 26 of 1971 and the scheme envisaged by Sections 10 and 11 thereof could not be implemented without the ' sanction of the Central Government. There is no case that any sanction has been given by the Central Government in this behalf. In fact the stand adopted by the Government in the statement filed by it on 29-9-1993 is that the implementation of the scheme envisaged by Section 10 of the Act has become impossible in view of the enactment of the Forest Conservation Act of 1980. It is also stated that the scheme cannot be implemented earlier in view of the fact that disputes regarding possession under the Act had not been completely settled in spite of the passage of about 9 years. By the enactment of Central Act 69 of 1980, the lands could not be assigned as various conditions imposed by that Act had to be satisfied and permission of the Central Government had to be taken before any assignment. It has come out that substantial extents of forest areas taken over from the various temples remain unassigned in terms of Section 10 of the Act even today. There is also an admission that income to the tune of 2.5 crores per annum is being obtained by the Government from these forest lands. These lands have remained in the possession of the State Government for more

than 13 years after the coming into force of the Vesting Act. It is to be noted that the assignment had to be done in terms of the Vesting Act and for that purpose a scheme had to be made within two years of the coming into force of that Act as envisaged by Section 11 thereof. Admittedly, no such scheme had been formulated. Thus now the Government is holding forest lands belonging to various Devaswoms on the strength of the vesting under Act 26 of 1971.

69. Thus by virtue of the Vesting Act, the forests that were being held by the Coralans as trustees and that belonged to the Devaswoms have now come to vest in the State no doubt free from all encumbrances as provided in Section 3 of the Act. In a sense these forest lands originally vested in the deities with theOoralans managing them as trustees. Even otherwise these lands were vested in trust for the benefit of the deity and the worshipping public who are the beneficiaries of the trust. Having taken over these lands with a view to assign them and not having assigned them as envisaged by Act 26 of 1971, the holding of such lands by the Government could be conceived to be as trustee vis-a-vis the deities and the worshipping public. If it is possible to postulate a trust it is also possible to say that the income derived from the trust property in the hands of the Government should be utilised for the proper upkeep and maintenance of these temples. As regards the Devaswoms, the Ooralans were in the position of trustees. By divesting the trutees of their rights and the deity of the ownership and having stepped into the shoes of the trustees who were holding these properties for the benefit of these temples, in my view, the State has become a constructive trustee in possession of trust properties. If the Government is in the position of a constructive trustee there is no difficulty in holding that there is an obligation on the Government which is holding the trust properties to maintain the Devaswoms and the temples and to expend moneys out of the income derived by the State from these vested forests for the benefit of the Devaswoms.

70. In any view, the Vesting Act did not envisage or provide for the deriving of any income by the State from the various lands that vested in the State in terms of Section 3 of the Act. In view of the fact that the State could not fulfil its obligations under the scheme envisaged by Sections 10 and 11 of Act 26 of 1971, the State has been left holding the various lands taken over by it. It must be remembered

that no compensation was paid by the State to the erstwhile owners. The income of about Rs. 2.5 crores obtained by the State every year from these forest lands in an unintended income or profit and in my view the said income is being held by the State only for the benefit of the Devaswoms. Even if the vesting under Section 3 of Act 26 of 1971 destroys every vestige of right in the de-vaswoms over the properties and is conceived to preclude the creation or postulation of atrust constructive or resultant in respect of the properties themselves, I am of the view that there will be a constructive trust in respect of the income derived by the State from these vested lands. It has to be noted that if the State were allowed to appropriate for itself the income from these forest lands, that will not be something that was contemplated or provided for by Act 26 of 1971. To permit the State to appropriate this income when the temples in Malabar do not even have the regular poojas or nivedyams would be wholly unjust and inequitable.

71. The State as the Sovereign, has an obligation to see that the temples are managed properly and in accordance with the settled religious rites and practices and that obligation will also compel the Government to utilise the income from the forest lands for the benefit of these temples. As noted already these lands had originally been dedicated to these temples by their owners, mostly sovereigns of principalities and all the rights of those titular heads have also come to vest in the Government. In that view, it will be a case where the Government will have the overall responsibility for the well being of the temples and the proper conduct of rituals and poojas in the said temples regularly and in accordance with the existing practices. Even otherwise, the State has a duty to administer these charities. It has been stated in Tudor on Charities, VII Edition page 294:

'The character of 'parens patriae' which formerly imposed upon the Crown the duty of watching over the interests of wards makes it the protector of charity in general. Therefore, as Lord Eldon said, where money is given to charity generally and indefinitely, without trustees or objects selected, the Kind as parens patriae is the constitutional trustee'.

The position in India is summarised by Justice Mukherjea in his Hindu Law of Religious and Charitable Trusts Fourth Edition page 455 as under:

'.....from very early times the religiousand charitable institutions in this country came under the protection of the ruling authority. There is indeed no clear writtentexts directly bearing on the subject and the text of Narada, which says that 'a king can reduce to slavery a Sanyashin who is guilty of incontinence', may conceivably suggest only in a vague way that the King had some sort of jurisdiction over religious bodies and institutions. As I have pointed out, however, there was undoubtedly some sort of customary law in India relating to temples and endowments which in the last resor had to be enforced by the King. The Smriti writers make it a duty on the part of the King to uphold the customes and usages of the land unless they are contradictory to revelation; and the Mitakshara, in commenting upon a passage of Yajnavalkya relating to the enforcement of customs, expressly refers to customs in connection with management of temples.

The duty of protecting endowments is oneof the primary duties' of the King as mentioned in Sukraniti and other treatises andthis is borne out by various historical documents which exist even at the present day .

This duty imposes an obligation on the State to maintain these temples. This will include keeping the necessary staff paying them sufficiently so as to enable them to discharge their duties promptly and properly. This responsibility cast on the Government coupled with the unintended income that has come into its hands (which would have gone into the hands of the Devaswoms but for the vesting under Act 26 of 1971) would enable this court to hold that the State has been constituted a trustee for the income from these forest lands with an obligation to spend the same for the benefit of these devaswoms and the worshipping public.

72. It may then be argued that even then the obligation will be only to maintain such of the Devaswoms whose lands have vested in the Government under Act 26 of 1971. It is seen from Ext. R15 that forest lands have been taken over only from some of the decaswoms and all the 1200 old temples in Malabar area of the State have not been deprived of the properties by the Vesting Act. The intention of dedicating these forest lands was for the benefit of the devaswoms and theState as the trustee could legally use all the surplus income after meeting its obligation towards the specified devaswoms from whom forest lands have been taken, for

the benefit of other similarly situated devaswoms and temples. By applying the doctrine of cy pres it could be postulated that when there is a surplus fund after the particular charitable purpose had been fulfilled, the said fund could he utilised for the benefit of other institutions similarly situated. The funds available after meeting the expenses of the Devaswom from whom the lands have been taken over by the State can be applied for the upkeep and maintenance of the other Devaswoms and temples situate in the Malabar area of the State to which the provisions of the Hindu Religious and Charitable Endowments Act applied since their upkeep and well being is also an object akin to the object with which these trusts were originally created by the various authors of families. That in India the doctrine of Cy Pres can be applied to religious trusts also is clear from the decisions reported in Prayag Dasji Varu v. Sri Rangacharula Varu, (1897) ILR 20 Mad 319, Shankara Narayana v. Board of Commissioner, AIR 1948 PC 25 and Lakshminarasimha Chari v. Sri Agastheeswara Swamy Varu, AIR 1960 SC 622. In this situation, I see no impediment in issuing a direction to the Government to apply the income from the forest lands for the purpose of the upkeep and the proper running of the Devaswoms in Malabar area. The income derived by the State from these forest lands that had vested in it under Act 26 of 1971 will have to be utilised for the benefit of the temples of Malabar governed by the Madras Hindu Religious and Charitable Endowments Act.

73. The condition of most of the Malabar temples is miserable. My learned brother has referred to that aspect in detail. These temples have practically no income to ensure their proper upkeep and the performance of daily poojas. The State is now in receipt of the income that should have gone to these temples but for the Vesting Act. Equity therefore demands that the State should provide for the upkeep of these temples. Equity is in favour of directing the State toutilise this income for the benefit of the temples. As Justice Cordoso stated in Beatty v. Guggentheism Exploration Company, 235 NY 360. 'A constructive trust is the formula through which the conscience of equity finds expression'. On this basis I find no difficulty in implying a constructive trust in the case on hand. As observed in Hanbury on Equity 13th Edn. at page 310:

'The broad principle is that a constructive trust may be imposed, regardless of established legal rules, in order to reach the result required by equity, justice and good conscience'.

There cannot be any doubt that equity and justice require the imposing of a constructive trust on the State in this case.

Thus, I am of the view that the direction to the State to spend for the upkeep of the various temples in Malabar, including the payment of proper salary to the temple employees, is justified.