IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

TUESDAY, THE 26TH DAY OF MARCH 2024 / 6TH CHAITHRA, 1946

WP(C) NO. 13863 OF 2023

PETITIONER:

SANOJ S.,
AGED 45 YEARS, S/O SAHADEVAN,
MOHALIL THEKKATHIL, VADAKKEKKARA KIZHAKKU,
PALLIPAD.P.O., HARIPAD, ALAPPUZHA, PIN – 690512.

BY ADVS.
R.KRISHNA RAJ
E.S.SONI
KUMARI SANGEETHA S.NAIR
RESMI A.

RESPONDENT:

1 **STATE OF KERALA,**
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE (DEVASWOM),
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN – 695001.

2 **ASSISTANT ENGINEER OFFICE OF THE ASSISTANT ENGINEER,**
PUBLIC WORKS DEPARTMENT (ROAD),
HARIPPAD, PIN – 690514.

3 **TAHASILDHAR (LR)**
KARTHIKAPPALLI, ALAPPUZHA, PIN – 690516.

4 **TRAVANCORE DEVASWOM BOARD,**
REPRESENTED BY ITS SECRETARY,
DEVASWOM BOARD OFFICE, NANTHANCODE,
THIRUVANANTHAPURAM, PIN – 695003.

5 **ASSISTANT DEVASWOM COMMISSIONER,**
RAILWAY STATION ROAD, HARIPAD, ALAPPUZHA,

PIN – 690514.

6 SUB GROUP OFFICER,
MANIMANGALAM DEVASWOM, HARIPAD P.O.,
ALAPPUZHA, PIN – 690514.

7 SAJI.M.GEORGE,
MADATHILAETHU VILLA, NEENDOOR,PALLIPPAD P.O.,
KARTHIKAPPALLI, ALAPPUZHA, PIN – 690512.

BY ADVS.
SANTHOSH KUMAR G, SC, TRAVANCORE DEVASWOM BOARD
SRI.S.RAJMOHAN, SENIR GOVT. PLEADER
P.SREEKUMAR
HELEN P.A.(K/000084/2019)
STEPHANIE SHARON(K/303/2022)
ATHUL ROY(K/1345/2022)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Anil K. Narendran, J.

The petitioner, who is a devotee of Mulluvakulangara Bhuvaneshwari Devi Temple, which is a temple under the management of the Travancore Devaswom Board, has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P6 order dated 26.11.2022 of the 2nd respondent Assistant Engineer, Public Works Department (Roads Division), Harippad; and a writ of mandamus commanding the 4th respondent Travancore Devaswom Board to protect the Devaswom land of Mulluvakulangara Bhuvaneshwari Devi Temple having an extent of 1.57 Ares comprised in Re-Survey No.309/4 of Pallippad Village and the temple structures existing in that property.

2. Going by the averments in the writ petition, the Kanikka Mandapam and Gopuram of Mulluvakulangara Bhuvaneshwari Devi Temple, which are directed to be demolished by Ext.P6 order dated 26.11.2022 of the 2nd respondent Assistant Engineer is situated in the land having an extent of 1.57 Ares comprised in Re-Survey No.309/4 of Pallippad Village. The said property is shown as Devaswom land in all revenue records including the Settlement Register, Ext.P1 Basic Tax Register (BTR) and Ext.P2 Asset Register of the Devaswom. The

Kanikka Mandapam and the Gopuram are recently renovated by a devotee. The 7th respondent, who is having a building on the northern side of Harippad-Elanjimel Road, submitted Ext.P4 complaint before the Government alleging construction of a compound wall by the Temple Advisory Committee of Mulluvakulangara Bhuvaneshwari Devi Temple. The document marked Ext.P5 is a communication dated 20.10.2022 of the 3rd respondent Tahsildar (Land Records), Karthikappally, addressed to the 2nd respondent Assistant Engineer, based on which the 2nd respondent issued Ext.P6 order dated 26.11.2022 whereby the 6th respondent Sub Group Officer of Manimangalam Devaswom is directed to demolish the compound wall constructed in Re-Survey No.309/5 of Pallippad Village. On receipt of Ext.P6 the 5th respondent Assistant Devaswom Commissioner, Harippad submitted Ext.P7 reply dated 13.03.2023, enclosing therewith necessary documents, pointing out that the constructions are in the Devaswom land and as such, the complaint made by the 7th respondent is liable to be rejected.

3. On 06.06.2023, when this writ petition came for admission, this Court admitted the matter on file. The learned Senior Government Pleader took notice for respondents 1 to 3 and the learned Standing Counsel for the Travancore Devaswom Board for respondents 4 to 6. Urgent notice by speed post was ordered to the

7th respondent returnable within four weeks. The learned Senior Government Pleader and also the learned Standing Counsel for Travancore Devaswom Board sought time to get instructions.

4. On 04.08.2023, when this writ petition came for consideration, the learned Senior Government Pleader submitted that survey of the disputed property is already over and that a counter affidavit of the 3rd respondent Tahsildar (LR) shall be placed on record within three weeks.

5. Thereafter, along with a memo dated 07.09.2023 of the learned Government Pleader, the report of the Tahsildar (LR) and sketch of the Taluk Surveyor are placed on record. The report of the Tahsildar (LR) reads thus:

> "An application in Form 10 as per survey and Boundaries Act 1961 was received from Assistant Executive Engineer, PWD(roads), Haripad on 06/01/2022 for the demarcation of Haripad Elanjimel road (puramboke) near 'kanikka vanchi' of Mullavakulangara Temple near pallippad junction in Pallippad Village, Karthikappally Taluk in Alappuzha against the water logging due to non construction of drains.
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> Site inspection was conducted and found that the holders of Resurvey No.309/4 in Block No.11 of Pallippad Village, Karthikappally Taluk was encroached 7m^2 of PWD Puramboke in resurvey No.309/5 and built a wall. This report is submitted along with the sketch of the encroached portion for further action."

6. On 09.03.2024, respondents 4 to 6 have filed a counter

affidavit.

7. On 19.03.2024, when this matter came for consideration, the learned Standing Counsel for Travancore Devaswom Board sought time to get instructions as to whether the survey conducted by the Taluk Surveyor was with notice to the Travancore Devaswom Board.

8. Heard the learned counsel for the petitioner, learned Senior Government Pleader for the respondents 1 to 3, the learned Standing Counsel for Travancore Devaswom Board for respondents 4 to 6 and also the learned counsel for the 7th respondent.

9. 'Deva' means God and 'swom' means ownership in Sanskrit and the term 'Devaswom' denotes the property of God in common parlance. See: **Prayar Gopalakrishnan and another v. State of Kerala and others [2018 (1) KHC 536]**.

10. In **A.A. Gopalakrishnan v. Cochin Devaswom Board [(2007) 7 SCC 482]** a Three-Judge Bench of the Apex Court held that the properties of deities, temples and Devaswom Boards are required to be protected and safeguarded by their trustees/archakas/shebaits/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only

with the passive or active collusion of the authorities concerned. Such acts of 'fence eating the crops' should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

11. In **A.A. Gopalakrishnan**, on the facts of the case on hand, the Apex Court noticed that, when Respondents 3 to 5 claimed ownership of Survey No.1043, which was the front portion of the temple premises in the possession of the temple (in the proposal for settlement dated 06.07.2000), the Devaswom Board, instead of investigating and verifying as to how they could claim ownership over temple property, strangely agreed for a settlement under which the temple was to get Sy.No.1043 (which was a temple land already in its possession), in exchange for giving away another temple land (Sy.No.1042/2) to Respondents 3 to 5. The Board Resolution dated 29.08.2000 agreeing for the settlement proposal clearly records that Sy.No.1043 is already in the possession of the temple. Before the Apex Court, respondents 3 and 4 contended that the settlement in the suit (O.S.No.399 of 1998) was validly arrived at between them (the plaintiffs) and the Devaswom Board (the defendant), that the

Devaswom Board had considered the proposal after taking legal advice and had duly passed a resolution to settle the suit. It was further contended that a decree having been made in terms of the compromise and such decree having attained finality, it cannot be questioned, interfered or set aside at the instance of a third party in a writ proceeding. They relied on the provisions of Order XXIII, Rule 3A of the Code of Civil Procedure, 1908, which provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The Apex Court held that, the bar contained in Order XXIII, Rule 3A will not come in the way of the High Court examining the validity of a compromise decree, when allegations of fraud/collusion are made against a statutory authority which entered into such compromise. While it is true that decrees of civil courts which have attained finality should not be interfered with lightly, challenge to such compromise decrees by an aggrieved devotee, who was not a party to the suit, cannot be rejected, where fraud/collusion on the part of officers of a statutory board is made out. Further, when the High Court by the order dated 09.09.1998 had directed the Board to take possession of Sy.No.1042/2 immediately from Respondents 3 and 4 in CDB No.3 of 1996, in a complaint by another devotee, it was improper for the Board to enter into a settlement with Respondents 2 and 3, giving up the right, title and

interest in Sy.No.1042/2, without the permission of the court which passed such order. The Apex Court concluded that, viewed from any angle, the compromise decree cannot be sustained and is liable to be set aside.

12. In **Travancore Devaswom Board v. Mohanan Nair [2013 (3) KLT 132]** a Division Bench of this Court noticed that in **A.A. Gopalakrishnan [(2007) 7 SCC 482]** the Apex Court emphasised that it is the duty of the courts to protect and safeguard the interest and properties of the religious and charitable institutions. The relevant principles under the Hindu law will show that the Deity is always treated similar to that of a minor and there are some points of similarity between a minor and a Hindu idol. The High Court therefore is the guardian of the Deity and apart from the jurisdiction under Section 103 of the Land Reforms Act, 1957 viz. the powers of revision, the High Court is having inherent jurisdiction and the doctrine of *parens patriae* will also apply in exercising the jurisdiction. Therefore, when a complaint has been raised by the Temple Advisory Committee, which was formed by the devotees of the Temple, about the loss of properties of the Temple itself, the truth of the same can be gone into by the High Court in these proceedings.

13. In **Mohanan Nair [2013 (3) KLT 132]** the Division Bench relied on the decision in **Achuthan Pillai v. State of Kerala**

[1970 KLT 838], wherein a Full Bench of this Court considered the validity of an order passed by the Government under Section 99 of the Madras Hindu Religious and Charitable Endowments Act, 1951. By the said order the Government cancelled the sanction given for transfer of immovable property of a Devaswom. The initial order, i.e., Ext.P1 order was passed by the Commissioner for sanction to lease 600 acres of forest land belonging to Emoor Bhagavathy Devaswom. The said order was passed in the year 1960 and the Government cancelled the same by Ext.P5 order dated 23.02.1967. The Full Bench traced the principles regarding the rights of an authority to protect the institution like Devaswom in order to prevent fraud. The Full Bench held that the power to cancel a sanction and thereby to make null and void an improvident transfer or alienation of immovable property of a Devaswom, though exercised under the guise of revision, is visitorial in character. It is a matter of common knowledge that even from very early times religious and charitable institutions in India came under the special protection of the ruling authority. The rulers of the country always asserted their right to visit these institutions in order to prevent fraud and redress the abuses in their management. In the celebrated **Rameswar Pagoda case [(1874) 1 Ind App 209]** it was pointed out by the Judicial Committee that the former rulers of this country always asserted the right to visit

endowments of this kind to prevent and redress the abuses in their management. The authorities, therefore, support the conclusion that supervision and control of Hindu Religious and Charitable Institutions is a function of government and that Government at all times asserted and exercised the power. The fact that Government did not exercise the power immediately when it became aware of the circumstances vitiating Ext.P1 order cannot prejudice the interest of the Devaswom. If the contentions of the petitioner were to prevail, it would mean that because the Government was not very vigilant in exercising the power the interest of the Devaswom should suffer. Section 10 of the Limitation Act, 1963, provides no period of limitation for a suit against a person in whom the trust property has become vested for any specific purpose or against his legal representatives or assigns for the purpose of following in his or their hands such property. The reason behind the section is that an express trust ought not suffer by the misfeasance or non-feasance of a trustee.

14. In **Nandakumar v. District Collector and others [2018 (2) KHC 58]** a Division Bench of this Court noticed that the legal position has been made clear by the Apex Court as to the role to be played by the High Court in exercising the '*parens patriae*' jurisdiction in **Gopalakrishnan v. Cochin Devaswom Board [(2007) 7 SCC 482]**. The said decision was referred to and relied

on by a Division Bench of this Court in **Travancore Devaswom Board v. Mohanan Nair [2013 (3) KLT 132]**. In the said circumstances, the properties of the Devaswom, if at all encroached by anybody and if any assignment/conveyance has been effected without the involvement of the Devaswom, securing 'pattayam' or such other deeds, the same cannot confer any right upon the parties concerned, unless the title so derived is clear in all respects. There cannot be any dispute that the remedy to retrieve such property belonging to the Devaswom is by resorting to the course stipulated in the Kerala Land Conservancy Act, 1957.

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

duty cast upon the Court to take every step to ensure that the property of the deity is protected.

16. In **Mrinalini Padhi v. Union of India [(2018) 7 SCC 789 : 2018 SCC OnLine SC 667]** - order dated 05.07.2018 in W.P.(C)No.649 of 2018 - the Apex Court noticed that the issue of difficulties faced by the visitors, exploitative practices, deficiencies in the management, maintenance of hygiene, proper utilisation of offerings and protection of assets may require consideration with regard to all shrines throughout India, irrespective of religion practised in such shrines. It cannot be disputed that this aspect is covered by List III Item 28 of the Seventh Schedule to the Constitution of India and there is a need to look into this aspect by the Central Government, apart from State Governments. Section 92 of the Code of Civil Procedure, 1908 permits a court also to issue directions for making a scheme or making an arrangement for any charitable or religious institution. Accordingly, the Apex Court directed that, if any devotee moves the jurisdictional District Judge throughout India with any grievance on the above aspect, the District Judge may either himself/herself or assign the issue/matter to any other court under his/her jurisdiction, examine above aspects and if necessary, send a report to the High Court. The High Court will consider these aspects in public interest, in accordance with law, and

issue such judicial directions as become necessary, having regard to the individual fact situation. Paragraphs 10, 11 and 20 of the order dated 05.07.2018 in W.P.(C)No.649 of 2018 [2018 SCC OnLine SC 667] read thus;

> "10. The issue of difficulties faced by the visitors, exploitative practices, deficiencies in the management, maintenance of hygiene, proper utilization of offerings and protection of assets may require consideration with regard to all shrines throughout India, irrespective of religion practised in such shrines. It cannot be disputed that this aspect is covered by List III Item 28 of the Seventh Schedule to the Constitution of India, and there is need to look into this aspect by the Central Government, apart from State Governments.
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> 11. Section 92 of the Code of Civil Procedure permits a Court also to issue directions for making a scheme or making an arrangement for any charitable or religious institution. Accordingly, we direct that if any devotee moves the jurisdictional District Judge throughout India with any grievance on the above aspect, the District Judge may either himself/herself or by assigning the issue/matter to any other Court under his/her jurisdiction examine the above aspects and if necessary, send a report to the High Court. We have no doubt that the High Court will consider these aspects in public interest, in accordance with law, and issue such judicial directions as become necessary, having regard to the individual fact situation.
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> xxx xxx xxx xxx

20. We may sum up our directions in today's orders, in addition to the orders dated 08.06.2018, as follows;

i) Report of the District Judge dated 26.6.2018 is accepted in principle and action to be taken by the temple administration.

ii) District Judge, Puri may send further report, if any by 31.8.2018, preferably by e-mail.

iii) The State Government may submit report of the Committee constituted by it on or before 31.8.2018.

iv) The Central Government may constitute its Committee, as already directed, within two weeks from today and place its interim report on record of this Court on or before 31.8.2018.

v) Copy of the Report of the District Judge may be placed on the websites of the temple management, Ministry of Culture and website of the Supreme Court for two weeks.

vi) The directions in the order dated 8.6.2018 may be complied with by all concerned and noncompliance thereof may be reported to this Court for appropriate action if necessary.

vii) The temple management may consider, subject to regulatory measures, with regard to dress code, giving of an appropriate declaration or compliance with other directions, permitting every visitor irrespective of his faith, to offer respects and to make offerings to the deity.

viii) We have noted that Hinduism does not eliminate any other belief and is eternal faith and wisdom and inspiration of centuries, as noted in earlier judgments of this Court.

ix) Difficulties faced by the visitors, deficiencies in management, maintenance of hygiene, appropriate utilisation of offerings and protections of assets with

> regard to shrines, irrespective of religion is a matter for consideration not only for the State Government, Central Government but also for Courts. Every District Judge throughout India may examine such matters himself or through any court under his jurisdiction and send a report to the High Court concerned so that such report can be treated as PIL on the judicial side and such direction may be issued as may be considered necessary having regard to individual fact situation.
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> x) Learned amicus is at liberty to engage with all stakeholders and to give suggestions for bringing about improvements and also to give a report to this Court. However, this will not stand in the way of the Committee of the State Government, Committee of the Central Government or any District Judge considering matters in terms of above directions."
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> (underline supplied)

17. In **Ganapathy Namboothiri v. State of Kerala [2024 (1) KLT 599 : 2024 (2) KHC 1]** a Division Bench of this Court in which one among us [Anil K. Narendran, J] was a party, held that the directions issued by the Apex Court in clauses (i) to (viii) and (x) of paragraph 20 of the order dated 05.07.2018 in W.P.(C)No.649 of 2018 - **Mrinalini Padhi [2018 SCC OnLine SC 667]** are in respect of the issue of public importance highlighted in that writ petition relating to the difficulties faced by the visitors to Shri Jagannath Temple at Puri and their harassment or exploitation by the Sevaks of the temple. Before the Apex Court, it was pointed out that the

environment of the surroundings is not hygienic, as it ought to be, and there are encroachments. There are deficiencies in the management of the shrine and the rituals are commercialised. See: Para 1 of the order dated 08.06.2018 in W.P.(C)No.649 of 2018 **[2018 SCC OnLine SC 602]**. It is in that context that the Apex Court issued a general direction in clause (ix) of para 20 of the order dated 05.07.2018 in W.P.(C)No.649 of 2018 - **Mrinalini Padhi [2018 SCC OnLine SC 667]** for redressal of the difficulties faced by the devotees of all shrines throughout India, irrespective of religion practised in such shrines, on account of harassment or exploitation by those in management, unhygienic surroundings, encroachments, deficiencies in management, etc. The general direction contained in clause (ix) of para 20 is to the effect that difficulties faced by the visitors, deficiencies in management, maintenance of hygiene, appropriate utilisation of offerings and protection of assets with regard to shrines, irrespective of religion is a matter for consideration not only for the State Government, Central Government but also for Courts. Every District Judge throughout India may examine such matters himself or through any court under his jurisdiction and send a report to the High Court concerned so that such report can be treated as PIL on the judicial side and such direction may be issued

as may be considered necessary having regard to individual fact situation.

18. In **Ganapathy Namboothiri [2024 (2) KHC 1]** the Division Bench held that the petition that can be moved by a devotee in terms of the general direction contained in clause (ix) of paragraph 20 of the aforesaid order dated 05.07.2018 - **Mrinalini Padhi [2018 SCC OnLine SC 667]** of the Apex Court is not one invoking the provisions under Section 92 of the Code of Civil Procedure, since that provision of the Code, which deals with public charities, can be invoked only in the manner provided in sub-section (1) of Section 92, to obtain a decree of any of the reliefs set out in clauses (a) to (h) of sub-section (1) of Section 92, in the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the court is deemed necessary for the administration of any such trust. In terms of the general direction contained in clause (ix) of paragraph 20 of the order dated 05.07.2018 of the Apex Court, which is one issued for redressal of the difficulties faced by the devotees on account of deficiencies in management, maintenance of hygiene, appropriate utilisation of offerings or protection of assets of shrines, a devotee can approach the District Judge having jurisdiction, with a petition pointing out the difficulties faced by him on account of any such

matters, in which event the District Judge may examine such matters by himself or through any court under his jurisdiction and send a report to the High Court concerned, for consideration of that report in the judicial side, for issuing any direction as may be considered necessary, having regard to individual fact situation.

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

provisions of sub-section (1) shall be invalid. In view of the provisions under sub-section (1) of Section 57, as soon as may be after the receipt of the application under Section 54, the Land Tribunal shall give notice to the landowner, the intermediaries and all other persons interested in the holding, to prefer claims or objections with regard to the application. As per sub-section (2) of Section 57, the land Tribunal shall, after considering the claims and objections received and hearing any person appearing in pursuance of the notice issued under sub-section (1) and after making due enquiries, pass orders - (i) on the application, if any, pending before it from the landowner or intermediary for resumption in accordance with the provisions of Section 22; and (ii) on the application for purchase under Section 54. In view of the provisions under sub-section (1) of Section 72, on a date to be notified by the Government in this behalf in the Gazette, all right, title and interest of the landowners and intermediaries in respect of holdings held by cultivating tenants (including holders of kudiyiruppus and holders of karaimas) entitled to fixity of tenure under Section 13 and in respect of which certificates of purchase under sub-section (2) of Section 59 have not been issued, shall, subject to the provisions of this section, vest in the Government free from all encumbrances created by the landowners and intermediaries and subsisting thereon on the said date. In view of the provisions

under sub-section (1) of Section 72B, the cultivating tenant of any holding or part of a holding, the right, title and interest in respect of which have vested in the Government under Section 72, shall be entitled to assignment of such right, title and interest. As per clause (a) to the proviso to sub-section (1) of Section 72B, no cultivating tenant shall be entitled to assignment of the right, title and interest in respect of any holding or part of a holding under this section if he, or if he is a member of a family, such family, owns an extent of land not less than the ceiling area. As per clause (b) to the proviso to sub-section (1) of Section 72B, where the cultivating tenant or, if he is a member of a family, such family, does not own any land or owns an extent of land which is less than the ceiling area, he shall be entitled to the assignment of the right, title and interest in respect of only such extent of land as will, together with the land, if any, owned by him or his family, as the case may be, be equal to the ceiling area. In view of the provisions under sub-section (1) of Section 72BB, any landowner or intermediary whose right, title and interest in respect of any holding have vested in the Government may apply to the Land Tribunal for the assignment of such right, title and interest to the cultivating tenant and for the payment of the compensation due to him under Section 72A. As per Section 72C, notwithstanding anything contained in sub-section (3) of Section 72B or Section 72BB, the Land

Tribunal may, subject to such rules as may be made by the Government in this behalf, at any time after the vesting of the right, title and interest of the landowners and intermediaries in the Government under Section 72, assign such right, title and interest to the cultivating tenants entitled thereto, and the cultivating tenants shall be bound to accept such assignment. In view of the provisions under Section 72F, the Land Tribunal has to issue notices and determine the compensation and purchase price. As per sub-section (1) of Section 72F, as soon as may be after the right, title and interest of the landowner and the intermediaries, if any, in respect of a holding or part of a holding have vested in the Government under Section 72, or, where an application under Section 72B or Section 72BB has been received by the Land Tribunal, as soon as may be after the receipt of such application, the Land Tribunal shall publish or cause to be published a public notice in the prescribed form in such manner as may be prescribed, calling upon the landowner, the intermediaries, if any and cultivating tenant; and all other persons interested in the land, the right, title and interest in respect of which have vested in the Government, to prefer claims and objections, if any, within such time as may be specified in the notice and to appear before it on the date specified in the notice with all relevant records to prove their respective claims or in support of their objections. As per the mandate

of sub-section (5) of Section 72F, the land Tribunal shall, after considering the claims and objections received in pursuance of the notice issued under sub-section (1) or sub-section (2) and the advice received from the village committee or village committees before the date specified therefor and hearing any person appearing in pursuance of the notice issued under sub-section (1) or sub-section (2) and after making due enquiries, pass an order specifying the matters enumerated in clauses (a) to (i) of sub-section (5). As per sub-section (1) of Section 72K, as soon as may be after the determination of the purchase price under Section 72F or the passing of an order under sub-section (3) of Section 72MM the Land Tribunal shall issue a certificate of purchase to the cultivating tenant, and thereupon the right, title and interest of the landowner and the intermediaries, if any, in respect of the holding or part thereof to which the certificate relates, shall vest in the cultivating tenant free from all encumbrances created by the landowner or the intermediaries if any.

20. In **Jayaprakashan K. [2023 (3) KHC SN 14]** the Division Bench, on an analysis of the aforesaid provisions under the Kerala Land Reforms Act, found that the said Act is a complete code by itself as far as the right of cultivating tenant to fixity of tenure in respect of his holding, the right of the cultivating tenant to get

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

an order under Section 57 of the Act. In such an order passed by the Land Tribunal on an application filed under Section 54 of the Act by the cultivating tenant for purchase of landlord's right, the Land Tribunal has to record its finding that the applicant is a cultivating tenant, as defined under clause (8) of Section 2 of the Act, who is entitled to fixity of tenure under Section 13 of the Act, in respect of his holding. The tenancy is not in respect of land falling under clauses (i) to (xii) of Section 3 of the Act, which deals with exemptions. The tenancy is not one created in contravention of the provisions of sub-section (1) of Section 74 of the Act, i.e., it is not a tenancy created after the commencement of the Act. It is well settled that, when the statute requires to do certain thing in a certain way, the thing must be done in that way or not at all. Other methods or modes of performance are impliedly and necessarily forbidden. The said proposition of law is based on a legal maxim *'expressio unius est exclusio alterius'* meaning thereby that, if the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner, and following other course is not permissible. The said proposition of law about limitation of the exercise of statutory power has first been identified by Jassel M.R. in the case of **Taylor v. Taylor [(1876) 1 Ch.D. 426]**, wherein it was laid down that, where a power is given to do a certain thing in a

certain way, that thing must be done in that way, or not at all, and that other methods of performance are necessarily forbidden. The Privy Council applied the said principle in the case of **Nazir Ahmed v. King Emperor [AIR 1936 PC 253]**. In **Breen v. Amalgamated Engineering Union (1971 (1) All ER 1148)** Lord Denning, M.R. observed that the giving of reasons is one of the fundamentals of good administration. In **Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 ICR 120)** it was observed that failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. By the order dated 15.12.2021 in W.P.(C)No.8851 of 2020, this Court restrained all Land Tribunals in the State from proceedings with any Original Application filed before the appointed date or S.M.Proceedings for purchase certificate in respect of Devaswom lands of Temples under the control/ management of Malabar Devaswom Board, Travancore Devaswom Board and also the Cochin Devaswom Board, without the respective Devaswom Board, represented by its Secretary, in the party array. In the said order, it was made clear that a copy of the Original Application or the report and other materials based on which S.M.Proceedings are initiated shall be enclosed along with the notice issued to the concerned Devaswom Board, through the concerned

Village Officer. The Land Tribunals were directed to afford a reasonable opportunity to the concerned Devaswom Board to raise its contentions, both legal and factual. It was made clear that the decision taken by the Land Tribunals shall be one reflecting the legal and factual contentions raised by both sides.

21. In **Jayaprakashan K. [2023 (3) KHC SN 14]**, in continuation of the order dated 15.12.2021 in W.P.(C)No.8851 of 2020, it was ordered that, in the orders passed by the Land Tribunals in the State in Original Applications/S.M.Proceedings for purchase certificate, the Land Tribunal has to record its findings that the applicant is a cultivating tenant, as defined under clause (8) of Section 2 of the Act, who is entitled to fixity of tenure under Section 13 of the Act, in respect of his holding; that the tenancy is not in respect of land falling under clauses (i) to (xii) of Section 3 of the Act, which deals with exemptions; and that the tenancy is not one created in contravention of the provisions of sub-section (1) of Section 74 of the Act, i.e., it is not a tenancy created after the commencement of the Act. In respect of temples which are controlled institutions under Malabar Devaswom Board, the Land Tribunals shall take note of the provisions under Section 29 of the Madras Hindu Religious and Charitable Endowments Act, 1951, as per which any exchange, sale or mortgage and any lease of any immovable property belonging to,

or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution.

22. Having considered the pleadings and materials on record and also the submissions made at the Bar, we notice that the dispute as to whether there is any encroachment by the Travancore Devaswom Board while constructing the structures in the land referred to in Ext.P6 order dated 26.11.2022 of the 2nd respondent Assistant Engineer can be resolved by directing the 2nd respondent Tahsildar (Land Records) to conduct another survey of the disputed land, by the Taluk Surveyor, with notice to the petitioner, the 2nd respondent Assistant Engineer, Public Works Department (Roads Division), the 4th respondent Travancore Devaswom Board and the 7th respondent with specific reference to the settlement register, asset register, etc.

In such circumstances, this writ petition is disposed of by directing the 3rd respondent Tahsildar (Land Records) to conduct another survey of the property in question through the Taluk Surveyor, with specific reference to settlement register, asset register, etc., taking note of the law laid down in the decisions referred to supra, with notice to the petitioner, the 2nd respondent Assistant Engineer, Public Works Department (Roads Division), the

4th respondent Travancore Devaswom Board and the 7th respondent, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a certified copy of this judgment. Based on the report and sketch prepared by the Taluk Surveyor, further proceedings shall be taken by the competent authority, in case any encroachment is found in that survey, with proper notice to the encroacher.

It would be open to the petitioner, the 4th respondent Travancore Devaswom Board and the 7th respondent to produce any supporting documents before the 3rd respondent Tahsildar (Land Records), along with a written submission.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

HARISANKAR V. MENON, JUDGE

Skk

APPENDIX OF WP(C) NO.13863/2023

PETITIONER'S EXHIBITS:

EXHIBIT P-1	**TRUE COPY OF THE BASIC TAX REGISTER DATED 26.09.2007**
EXHIBIT P-2	**TRUE COPY OF THE RELEVANT PAGE OF DEVASWOM ASSETS REGISTER DATED 22.10.2008**
EXHIBIT P-3	**TRUE COPY OF THE TAX RECEIPT DATED 12.05.2010**
EXHIBIT P-4	**TRUE COPY OF THE COMPLAINT OF THE 7TH RESPONDENT DATED 21.11.2022**
EXHIBIT P-5	**TRUE COPY OF THE LETTER OF THE TAHASILDHAR DATED 20.10.2022**
EXHIBIT P-6	**TRUE COPY OF THE ORDER OF THE ASSISTANT ENGINEER DATED 26.11.2022**
EXHIBIT P-7	**TRUE COPY OF THE EXPLANATION SUBMITTED BY THE ASSISTANT COMMISSIONER DATED 13.03.2023**
EXHIBIT P-8	**TRUE COPY OF THE PHOTOGRAPH SHOWING THE TEMPLE STRUCTURES DATED NIL**
EXHIBIT P-9	**TRUE COPY OF THE PHOTOGRAPH SHOWING THE TEMPLE STRUCTURES DATED NIL**
EXHIBIT P-10	**TRUE COPY OF THE PHOTOGRAPH SHOWING THE TEMPLE STRUCTURES DATED NIL**