IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

Friday,the 18th day of December 2020/27th Agrahayana, 1942

WP(C) No.20495/2019(J)

PETITIONER

BIJESH KUMAR M,AGED 37 YEARS
S/O. GOPALAKRISHNAN, MARATH HOUSE,
THAMARAYOOR P. O., GURUVAYUR, PIN - 680505.

RESPONDENTS

1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001.

2. SECRETARY TO GOVERNMENT
DEVASWOM DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001.

3. GURUVAYUR DEVASWOM COMMISSIONER
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001.

4. GURUVAYUR DEVASWOM MANANGING COMMITTEE
GURUVAYUR DEVASWOM, GURUVAYUR - 680101,
REPRESENTED BY ITS ADMINISTRATOR.

5. THE ADMINISTRATOR
GURUVAYUR DEVASWOM, GURUVAYUR - 680101.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay further payment of the amount collected by the 4th & 5th respondents through the Contribution Box fixed as per Ext.P6 & P7 decisions to the 1st respondent, pending disposal of this Writ Petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 24-09-2019 and upon hearing the arguments of M/S. M.A.ABDUL HAKHIM & JOSEPH GEORGE (KANNAMPUZHA), Advocates for the petitioner, SRI. P.NARAYANAN, SENIOR GOVERNMENT PLEADER & SRI. K.V. SOHAN, STATE ATTORNEY, for respondents 1 & 2 and of SRI.T.K.VIPINDAS, Advocate for respondents 3 to 5, the court passed the following:-

P.T.O.

mls

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

Friday,the 18th day of December 2020/27th Agrahayana, 1942

WP(C) No.9765/2020

PETITIONER

A.NAGESH,AGED 50 YEARS
S/O. GOPALAKRISHNAN, ATTOUR HOUSE, THALAVANIKKARA, KONIKARA P.O.
THRISSUR 680 306.

RESPONDENT

1. THE STATE OF KERALA
   REPRESENTED BY ITS SECRETARY TO THE GOVERNMENT, DEPARTMENT FOR DEVASWOM, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001.
2. SREE GURUVAYOOR DEVASWOM COMMITTEE, GURUVAYOOR,
   REP BY. THE CHAIRMAN, OFFICE OF THE MANAGING COMMITTEE,
   GURUVAYOOR DEVASWOM COMMITTEE, GURUVAYOOR 680 101.
3. SREE GURUVAYOOR DEVASWOM,
   REP BY. THE ADMINISTRATOR, GURUVAYOOR DEVASWOM, GURUVAYOOR 680 101.
4. THE COMMISSIONER,
   GURUVAYOOR DEVASWOM, GURUVAYOOR P.O. THRISSUR DISTRICT 680 101.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the government to keep the money received as per Exhibit P1 in separate account and shall not utilize the same, pending final disposal of this writ petition.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of SRI.RAJESH CHAKYAT, Advocate for the petitioner, STATE ATTORNEY for R1, SRI.T.K.VIPINDAS, Advocate for R2 & R3, and of STANDING COUNSEL for R4, the court passed the following:

P.T.O.

18/12/2020

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

Friday,the 18th day of December 2020/27th Agrahayana, 1942

WP(C) No.9780/2020

PETITIONER

R. V. BABU,AGED 52 YEARS
S/O. VISWANATHAN, GENERAL SECRETARY, HINDU AIKYA VEDI KERALA (REG. NO.TVM/TC/1332-2017), RESIDING AT NALINAM, MOOKAMBIKA ROAD, NORTH PARAVOOR, ERNAKULAM, KERALA - 683513.

RESPONDENTS

1. STATE OF KERALA
   REPRESENTED BY ITS SECRETARY TO THE GOVERNMENT, DEPARTMENT FOR DEVASWOM, GOVT. OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.
2. THE CHIEF SECRETARY TO THE GOVERNMENT
   GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.
3. GURUVAYOOR DEVASWOM MANAGING COMMITTEE
   REPRESENTED THROUGH ADMINISTRATOR, GURUVAYOOR DEVASWOM, GURUVAYOOR P.O, THRISSUR DISTRICT, PIN - 680 101.
4. THE ADMINISTRATOR
   GURUVAYOOR DEVASWOM, GURUVAYOOR P. O., THRISSUR DISTRICT, PIN - 680 101.
5. THE CHAIRMAN
   GURUVAYOOR DEVASWOM MANAGING COMMITTEE, GURUVAYOOR DEVASWOM, GURUVAYOOR P. O., THRISSUR DISTRICT, PIN - 680 101.
6. THE COMMISSIONER
   GURUVAYOOR DEVASWOM, GURUVAYOOR P. O., THRISSUR DISTRICT, PIN - 680 101.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to

(1) Direct the Respondents 3 to 6 not to alienate/transfer any Devaswom funds to CMDRF or to any other agency other than for religious purposes mentioned in the Act 1978 and to recover Rs. 5 crores paid through cheque to the CMDRF on 5/5/2020 within two weeks.

(2) Appoint a receiver/administrator to see that affairs of the Guruvayoor Deveswom is done in compliance with provisions of the Guruvayoor Deveswom Act 1978.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S SAJITH KUMAR V, A.V.VIVEK, Advocates for the petitioner and of M/S K.V.SOHAN, STATE ATTORNEY for R1&R2, T.K.VIPINDAS Advocate for R3&R4, P.B.KRISHNAN, MANU VYASAN PETER, P.B.SUBRAMANYAN, SABU GEORGE, Advocates for R5, and of STANDING COUNSEL for R6,the court passed the following:

18/12/2020

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

Friday,the 18th day of December 2020/27th Agrahayana, 1942

WP(C) No.9800/2020(S)

PETITIONER

KERALA KSHETHRA SAMRAKSHANA SAMITHI,
REG.NO.142/77, JAYAPRAKASH NARAYAN ROAD, KOZHIKODE,
KOZHIKODE DISTRICT, PIN-673 002, REPRESENTED BY ITS
GENERAL SECRETARY (NARAYANAN KUTTY K., S/O. KUNHUNNI NAIR,
AGED 65, MADATHIL HOUSE, VALORINGAL, PUNNAPPALA POST,
WANDOOR VIA, MALAPPURAM DISTRICT-679 328).

RESPONDENTS

1. THE GURUVAYOOR DEVASWOM MANAGING COMMITTEE,
   REPRESENTED BY ITS ADMINISTRATOR, GURUVAYOOR DEVASWOM,
   GURUVAYOOR, THRISSUR DISTRICT, PIN-680 101.
2. THE COMMISSIONER,
   GURUVAYOOR DEVASWOM, GURUVAYOOR,
   THRISSUR DISTRICT, PIN-680 101.
3. ADVOCATE K.B. MOHANDAS,
   CHAIRMAN, GURUVAYOOR DEVASWOM, TC 37/1432,
   KOOLIYATTUVALAPPIL HOUSE, UDAYA, POOTHOLE,
   THRISSUR, THRISSUR DISTRICT-680 004.
4. THE STATE OF KERALA,
   REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT OF KERALA,
   SECRETARIAT, THIRUVANANTHAPURAM,
   THIRUVANANTHAPURAM DISTRICT, PIN-695 001.
5. THE PRINCIPAL SECRETARY,
   FINANCE TREASURY DEPARTMENT, GOVERNMENT OF KERALA,
   SECRETARIAT, THIRUVANANTHAPURAM,
   THIRUVANANTHAPURAM DISTRICT, PIN-695 001.
6. THE DISTRICT COLLECTOR,
   COLLECTORATE, CIVIL LINES ROAD, KALYAN NAGAR,
   AYYANTHOLE, THRISSUR, THRISSUR DISTRICT-680 003.
7. THE STATE BANK OF INDIA, EAST NADA BRANCH,
   GURUVAYOOR, THRISSUR DISTRICT-680 101,
   REPRESENTED BY ITS BRANCH MANAGER.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to call for the records and direct the 7th respondent not to release any money from the accounts of Guruvayoor Devaswom to respondents 4 to 6 by way of encashment of cheque or otherwise or direct the 4th and 5th respondent to return the amount to Guruvayoor Devaswom in case the 4th and 5th respondents have already collected any amount by encashment of cheque or otherwise from respondents 1 to 3 pending disposal of this writ petition (Civil).

P.T.O.

WP(C) No.9800/2020(S)

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 08/05/2020 and upon hearing the arguments of M/S V.N.SANKARJEE, VIJAYAN PILLAI P.K., KEERTHI B. CHANDRAN, M.SUSEELA, R.UDAYA JYOTHI & M.M.VINOD, V.N.MADHUSUDANAN, Advocates for the petitioner, SRI.T.K. VIPINDAS, Advocate for R1, M/S.P.B.KRISHNAN, MANU VYASAN PETER, P.B.SUBRAMANYAN & SABU GEORGE, Advocates for R3 and of SRI.K.V. SOHAN, STATE ATTORNEY for R4 to R6, the court passed the following:

P.T.O.

rs.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS.JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MRS.JUSTICE M.R.ANITHA

Friday, the 18th day of December 2020/27th Agrahayana, 1942

WP(C)No.9802/2020(A)

PETITIONER

PRASANNA KUMAR .P
NAVANEETHAM, NADUVATTOM P.O. PALLIPPAD, HARIPPAD, ALAPPUZHA 690 512.

RESPONDENTS

1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, DEPARTMENT OF DEVASWOM, KERALA GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001.

2. GURUVAYOOR DEVASWOM MANAGING COMMITTEE,
REPRESENTED BY ITS ADMINISTRATOR, GURUVAYOOR DEVASWOM BOARD, GURUVAYOOR, 680 101.

3. COMMISSIONER,
GURUVAYOOR DEVASWOM BOARD, DEVASWOM BUILDING GURUVAYOOR 680 101.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the respondent to produce the copy of the resolution of the Board dated 05-05-2020 making contribution to CMDRF pending disposal of this case.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S.R.KRISHNA RAJ, E.S.SONI & KUMARI SANGEETHA S.NAIR, Advocates for the petitioner, SRI.K.V.SOHAN, STATE ATTORNEY for R1, and of SRI.T.K.VIPINDAS, STANDING COUNSEL for R2, the court passed the following:

P.T.O

TRC/18-12-2020

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

Friday, the 18th day of December 2020/27th Agrahayana, 1942

WP(C) No.9805/2020(A)

PETITIONER

K.S.R.MENON, AGED 66 YEARS
S/O.LATE G.K.NAIR, RESIDING AT A1 A7, PERIYAR HERMITAGE, COMPANIPADI, ALUVA, ERNAKULAM, PIN - 683 016, KERALA.

RESPONDENTS

1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, THIRUVANANTHAPURAM, PIN - 695 001.

2. GURUVAYUR DEVASWOM,
REPRESENTED BY ITS ADMINISTRATOR, SREE PADMAM, EAST NADA,GURUVAYUR, THRISSUR DISTRICT, PIN - 680 101.

3. GURUVAYUR DEVASWOM MANAGING COMMITTEE,
REPRESENTED BY ITS CHAIRMAN, OFFICE OF THE MANAGING COMMITTEE, SREE PADMAM, EAST NADA, GURUVAYUR, THRISSUR DISTRICT, PIN - 680 101.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct

a) the 1st respondent not to encash the amount for any purposes which was donated by the 2nd and 3rd respondents during May,2020, or;

b) in the if it is encashed, to keep the said amount in a suspense account pending consideration of the above writ petition in the interests of justice.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S.V.SHYAMOHAN, K.R.ARUN KRISHNAN & SUDEEP ARAVIND PANICKER, Advocates for the petitioner, SRI.K.V.SOHAN, STATE ATTORNEY for R1, and of SRI.T.K.VIPINDAS, STANDING COUNSEL for R2 & R3, the court passed the following:

P.T.O

TRC/18-12-2020

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

Friday,the 18th day of December 2020/27th Agrahayana, 1942

WP(C) No.9887/2020(I)

PETITIONER

MOHANKUMAR.B,AGED 59 YEARS,
S/O.LATE BALANKUTTY, LAKSHMI VILAS BUNGLAW,
CHAKKUMKANDAM P.O, PALUVOI (VIA), THRISSUR-680522.

RESPONDENTS

1. THE STATE OF KERALA,REPRESENTED BY CHIEF SECRETARY TO THE GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

2. THE GURUVAYUR DEVASWOM COMMISSIONER,OFFICE OF THE GURUVAYUR DEVASWOM COMMISSIONER, THIRUVANANTHAPURAM-695001.

3. THE GURUVAYUR DEVASWOM,REPRESENTED BY ITS ADMINISTRATOR, SREEPADMAM, EAST NADA, GURUVAYUR, THRISSUR, PIN-680101.

4. THE GURUVAYUR DEVASWOM MANAGING COMMITTEE, REPRESENTED BY ITS CHAIRMAN, OFFICE OF THE MANAGING COMMITTEE, SREEPADMAM, EAST NADA, GURUVAYUR, THRISSUR, PIN-680101.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay the operation and all further proceedings pursuant to Exhibits P1 and P2, pending disposal of the above Writ Petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S SAJEEV KUMAR K.GOPAL, Advocate for the petitioner, STATE ATTORNEY, for R1 and of SRI.T.K.VIPINDAS, Standing Counsel for R3 & R4, the court passed the following:

Smj PTO

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

Friday,the 18th day of December 2020/27th Agrahayana, 1942

WP(C) No.9888/2020(I)

PETITIONER

BIJESH KUMAR.M.,,AGED 38 YEARS,S/O. GOPALAKRISHNAN,
MARATH HOUSE, THAMARAYOOR P.O, GURUVAYUR, PIN-680505.

RESPONDENTS

1. STATE OF KERALA,REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-PIN-695001.

2. SECRETARY TO GOVERNMENT,DEVASWOM DEPARTMENT ,GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.

3. GURUVAYUR DEVASWOM COMMISSIONER, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.

4. GURUVAYUR DEVASWOM MANAGING COMMITTEE,GURUVAYUR DEVASWOM, GURUVAYUR-680101, REPRESENTED BY ITS ADMINISTRATOR.

5. THE ADMINISTRATOR,GURUVAYUR DEVASWOM, GURUVAYUR-680101.

6. K.B. MOHANDAS,ADVOCATE, T.C. 37/1432, KOOLIYATTU VALAPPIL HOUSE, UDAYA, CIVIL LINES ROAD, POOTHOLE P O, CHUNGAM, THRISSUR, PIN-680004.

7. A. V. PRASANTH,AKAMPADI HOUSE, BRAHMAKULAM P. O.,THRISSUR, PIN - 680104.

8. K. AJITH,MUNDODITHARA, VADAKKENADA, VAIKKOM P.O., PIN - 686 141.

9. K. V. SHAJI,KIZHAKKAPPURATHU VEEDU, CHENGAL, KALADY P. O., ERNAKULAM, PIN - 683 574.

10. E.P.R. VESALA,PANKAJALAYAM, CHATTUKAPARA P. O., KANNUR, PIN - 670592.

11. BRAHMASREE MALLISSERI PARAMESWARAN NAMBOOTHIRIPPADU, MALLISSERIMANA, GURUVAYOOR, PIN - 680101.

12. SESIR S.V.,ADMINISTRATOR,GURUVAYOOR DEVASWOM, GURUVAYOOR,PIN - 680 101.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the 4th respondent not to make any payment to Chief Minister's Distress Relief Fund of the 1st respondent, pending disposal of the above Writ Petition (Civil).

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of SRI.M.A.ABDUL HAKHIM, Advocate for the petitioner and of STATE ATTORNEY for respondents 1 & 2, the court passed the following:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

Friday, the 18th day of December 2020/27th Agrahayana, 1942

WP(C) No.9808/2020(A)

PETITIONER

PRADEEP R.S. ALIAS HARI PALOD, AGED 43 YEARS
S/O.RAVEENDRAN NAIR, ROHINI PLAVARA HOUSE, PALODE, NANNIYOD.P.O,
NEDUMANGAD, THIRUVANANTHAPRUAM-695 562

RESPONDENTS

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF DEVASWOM,
GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM-695562

2. THE CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM-695001

3. GUVAYOOR DEVASWOM MANAGING COMMITTEE
REPRESENTED THROUGH ADMINISTRATOR, GURUVAYOOR DEVASWOM, GURUVAYOOR.P.O,
THRISSUR DISTRICT-680101

4. THE ADMINISTRATOR,
GURUVAYOOR DEVASWOM GURUVAYOOR.P.O, THRISSUR-680101

5. THE CHAIRMAN
GURUVAYOOR DEVASWOM MANAGING COMMITTEE, GURUVAYOOR DEVASWOM
GURUVAYOOR.P.O, THRISSUR DISTRICT-680101

6. THE COMMISSIONER,
GURUVAYOOR DEVASWOM, GURUVAYOOR.P.O, THRISSUR DISTRICT-680101

7. THE DISTRICT COLLECTOR,
OFFICE OF THE DISTRICT COLLECTOR, COLLECTORATE, THRISSUR-680003

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the respondents to handover back the amount of Rs.5 crores to the Guruvayoor Devaswom Board forthwith, pending final disposal of this Writ Petition.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S.VISHNUPRASAD NAIR & G.SREEKUMAR (CHELUR), Advocates for the petitioner SRI.K.V.SOHAN, STATE ATTORNEY for R1, R2 & R7 and of SRI.T.K.VIPINDAS, STANDING COUNSEL for R3 & R4, the court passed the following:

P.T.O

TRC/18-12-2020

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

Friday,the 18th day of December 2020/27th Agrahayana, 1942

WP(C) No.9904/2020(K)

PETITIONER

M.R.ARUNKUMAR KARANAVAR,AGED 46 YEARS
S/O. RADHAKRISHNA KARANAVAR, PANAGATTETH HOUSE,
PILAPUZHA, HARIPPAD P.O. 690 514.

RESPONDENTS

1. GURUVAYOOR DEVASWOM MANAGING COMMITTEE
REPRESENTED BY ITS ADMINISTRATOR, GURUVAYOOR DEWASWOM,
GURUVAYOOR P.O. 680 101, THRISSUR.

2. THE COMMISSIONER,
GURUVAYOOR DEVASWOM, GURUVAYOOR 680 101. THRISSUR.

3. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM 695 001.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to issue an interim direction to the 3rd respondent to credit to the account of the Guruvayoor Devaswom an amount of Rs. 5 crore received in the CMDRF pursuant to the decision of the Devaswom Committee of Guruvayoor referred to in Ext.P1, pending disposal of the Writ Petition(C).

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of SRI. S.SANAL KUMAR, Advocate for the petitioner and of SRI. T.K.VIPINDAS, Advocate for respondent 1, the court passed the following:-

P.T.O.

mls

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

Friday,the 18th day of December 2020/27th Agrahayana, 1942

WP(C) No.10169/2020

PETITIONER

ANIL KUMAR K.N,AGED 51 YEARS
S/O.G. NARAYANA PILLAI, AMBIKA VILAS,
SOUTH VAZHAKULAM, ALUVA-683105, ERNAKULAM DISTRICT,

RESPONDENT

1. GURUVAYOOR DEVASWOM MANAGING COMMITTEE
REPRESENTED BY ITS ADMINISTRATOR,
GURUVAYOOR DEVASWOM BOARD, EAST NADA,
GURUVAYOOR-680101, THRISSUR DISTRICT.

2. THE COMMISSIONER,
GURUVAYOOR DEVASWOM BOARD, EAST NADA,
GURUVAYOOR-680101, THRISSUR DISTRICT.

3. THE ADMINISTRATOR
GURUVAYOOR DEVASWOM BOARD,
EAST NADA, GURUVAYOOR-680101, THRISSUR DISTRICT.

4. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
REVENUE DEPARTMENT(DEVASWOM), SECRETARIAT, THIRUVANANTHAPURAM-695001.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the 4th respondent not to utilize the amount received from the respondents 1 to 3 as donation of Rs.5 crores to the Chief Minister's Distress Management Relief Fund pending the W.P.(C).

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S K.SHRIHARI RAO & N.SHOBHA, Advocates for the petitioner, SRI. T.K.VIPINDAS, Advocate for R1 & R3 and of SRI.K.V.SOHAN, STATE ATTORNEY for R4, the court passed the following:

18/12/2020

28/12/2020

C.R.

A.HARIPRASAD,
ANU SIVARAMAN & M.R.ANITHA, JJ.

W.P.(C) Nos.20495 of 2019
&
9765, 9780,9800,9802,9805,9808,
9887,9888,9904 and 10169 of 2020

Dated this the 18th day of December, 2020

COMMON ORDER

Hariprasad, J.

Prologue

An order of reference made by a Division Bench on 24.09.2019 requesting the Honourable Chief Justice to place the entire files in W.P.(C) No.20495 of 2019 for the consideration of a Full Bench and similar orders subsequently passed by another Division Bench resulted in boarding the captioned cases before us for determination of the questions raised. Individuals, who claim to be devotees/worshippers of Lord Guruvayurappan, the presiding deity in Sree Krishna Temple, Guruvayur, in their personal right and as the representatives of some religious organizations have challenged certain administrative decisions taken by Guruvayur Devaswom Managing Committee ("G.D.M.C.", for short) set up under the provisions of the Guruvayur Devaswom Act, 1978 ("Act of 1978", for short). Learned Judges constituting the Division Benches noticed

apparent conflicts between the views taken in W.P.(C) No.19035 of 2019 and **C.K.Rajan v. State of Kerala (AIR 1994 Ker 179)**. According to the orders of reference, an authoritative pronouncement about the legal implication of certain provisions in the Act of 1978, especially Section 27, is essential to determine the correctness and legality of the decision taken by G.D.M.C. and approved by Guruvayur Devaswom Commissioner ("Commissioner", for short) to donate a certain sum of money to the Chief Minister's Distress Relief Fund ("C.M.D.R.F.", for short). Views taken in this regard in **C.K.Rajan**'s case and W.P.(C) No.19035 of 2019 are in conflict with one another. W.P.(C) No.20495 of 2019 is taken as the leading case since the first order of reference happened to be passed therein. Parties are referred to in the ranks shown in the leading case.

Legend about the temple

2. Ardent devotees of Lord Guruvayoorappan worship the idol as an image of Sree Krishnan, an incarnation of Lord Maha Vishnu. The idol consecrated in the temple is believed to be made of a rare stone (*Pathala Anjanam*) and it is presented by Lord Vishnu himself to Lord Bhrahma, who later handed over the idol for worship to his son Kaisyapa Prajapathi. Later it came to the hands of Vasudeva, father of Lord Sree Krishnan. The idol was worshipped by Vasudeva and Lord Sree Krishnan himself. Lord Sree Krishnan instructed his foremost disciple Udhava at the time of *swargarohanam* (ascension to the heaven) to recover the idol that could be

found floating on the surface of water at the time when Dwaraka submerged under the sea. Lord Sree Krishnan also instructed him to entrust it to Saint Bhrihaspathi, Guru or preceptor of Devas, for its consecration at the most appropriate place for the benefit of devotees. Guru Bhrihaspathi, with the help of Vayu (God of wind), installed the idol at the appropriate place and at an auspicious time. Since then the place itself came to be known as Guruvayur, because of the consecration of the idol by Guru Bhrihaspathi and Vayu together. Renowned devotees, like Vilwamangalam Swamiyar, Melpathoor Narayana Bhattathirippad, Poonthanam, Kurooramma, et al. believed to have obtained salvation on account of their unalloyed devotion, faith and deference to Lord Guruvayurappan. Millions of devotees across the length and breadth of the country, and even abroad, worship Lord Guruvayurappan with utmost devotion and piety.

Temple administration and previous litigations – Brief History

3. It is admitted by all the sides that the *Uraima* (hereditary trusteeship) right over the temple was hereditarily vested jointly in the Zamorin Raja of Kozhikode and the Karanavan (eldest male member) for the time being in Mallisseri Illom at Guruvayur. Learned author **P.R.Sundara Aiyar** in his treatise "**Malabar & Aliyasanthana Law**" defines "*Uralan*" as a trustee of temple in Malabar. High Court of Madras in its judgment dated 01.11.1889 in Appeal No.35 of 1887 declared the joint

Uraimaship (joint trusteeship) vested in Zamorin Raja and karanavan of Mallisseri Illom. In the year 1926, the Madras Legislature passed Madras Hindu Religious and Charitable Endowments Act, 1926 and it came into force on 08.02.1927. Shortly thereafter, some of the temple worshippers filed a petition before the Hindu Religious Endowments Board, constituted under the said Act, alleging mismanagement of the affairs of the temple by the *Uralans* (hereditary trustees). Board started enquiry on the basis of that petition which finally resulted in settling a scheme of administration for the temple under Section 63(1) of the said Act. Under that scheme, the Board completely disregarded the rights of Mallisseri Namboothiri to function as a hereditary trustee of the temple and entrusted the day-to-day management to the Zamorin Raja as hereditary trustee, subject to the supervision by the officers of the Board. Then Karanavan of Mallisseri Illom instituted O.S.No.1 of 1929 in the District Court of South Malabar at Calicut under Section 63(4) of the Madras Hindu Religious and Charitable Endowments Act to amend the scheme settled by the Board and to recognize his due position as joint *Uralan* of the Devaswom. The worshippers, on whose request the scheme had been framed by the Board, instituted O.S.No.2 of 1929 in the same court contending that the Board had not incorporated sufficient safeguards in the scheme to ensure proper management of the institution. They also prayed that the scheme should be suitably amended by making provisions for the appointment of additional non-hereditary

trustees and placing the management in the hands of the said Board consisting of five trustees. The District Court upheld the claim of Mallisseri Namboothiri to be a joint hereditary trustee of the temple along with Zamorin Raja. Certain amendments were also made in the scheme of administration settled by the Board. Against the said decision, the Zamorin Raja filed A.S.Nos.211 and 212 of 1930 before the High Court of Madras. Those appeals were disposed of by a Division Bench as per judgment dated 21.11.1930. Learned Judges confirmed the decree of the District Court insofar as it recognized the rights of Mallisseri Namboothiri to function as a joint trustee of the temple and the modification effected in the scheme in this regard was upheld. The scheme set out by the District Court on the basis of the contentions put forward by the worshippers was also confirmed by the learned Judges with certain modifications. Thereafter a suit, O.S.No.1 of 1933, was filed by some of the worshippers for amending the aforementioned scheme. As per the decree in that suit, some minor modifications were effected in the then existing scheme. Since then the administration of the temple was being carried on under the modified scheme. This position continued even after the Madras Hindu Religious Endowments Act, 1926 was replaced by the Madras Hindu Religious and Charitable Endowments Act, 1951 ("HR&CE Act", in short) which came into force on 30.09.1951.

4. In 1965, the Commissioner, Hindu Religious and Charitable

Endowments Department (Administration) filed O.P.No.3 of 1965 in the Court of the Subordinate Judge, Thrissur under Section 62(3)(a) of the HR&CE Act praying to modify the existing scheme for the Guruvayur temple in the lines indicated in a draft scheme submitted before the court. When that petition was pending before the Court, the State Legislature passed Guruvayur Devaswom Act, 1971 ("Act of 1971", in short). During that time a fire accident took place in Guruvayur temple in the month of November, 1970 and an enquiry commission was appointed by the Government to look into the circumstances which led to the fire accident. The commission expressed a view that the accident had occurred due to prolonged neglect and indifference on the part of the administrators in the matter of maintenance and timely repairs. Zamorin Raja and Mallisseri Namboothiri in their capacity as hereditary trustees filed O.P.No.812 of 1971 challenging the validity of the Act of 1971 on the ground that its provisions infringed their fundamental rights under Clauses (b) and (d) of Article 26 of the Constitution of India. That contention was rejected by a Full Bench of three Judges of this Court as per judgment in **Kunhettan Thampuran v. State of Kerala (1973 KLT 106)**. The writ petition was not filed by them in representative capacity, representing the denomination consisting of the worshippers of the temple. Thereafter O.P.No.314 of 1973 was filed by one Krishnan for declaring that the Act of 1971 and the Guruvayur Devaswom (Amendment) Act, 1972 and more particularly many

of the provisions in the parent Act and the Amendment Act were unconstitutional and void on the ground of contravention of Articles 14 and 26 of the Constitution of India. It came up for hearing before a Bench consisting of two learned Judges, who were members of the Full Bench which decided **Kunhettan Thampuran**'s case. By an order of reference dated 29.06.1973, the learned Judges referred the case to a Full Bench opining that the points raised should be considered by such a Bench. Since the petitioner in O.P.No.314 of 1973 was not a party in the earlier writ petition, which was certainly not a representative action, the principle of res judicata was not attracted and therefore there was no legal bar against his urging appropriate contentions. The Full Bench thought it fit to refer the questions involved to be considered by a Larger Bench consisting of five learned Judges. That is how the decision in **Krishnan v. Guruvayoor Devaswom Managing Committee (1979 KLT 350)** happened to be passed by a Larger Bench.

5. In **Krishnan**'s Case, after elaborately considering the provisions of the Act of 1971 and the relevant constitutional provisions, the Bench came to a conclusion that Sections 3, 4, 11, 12, 14 to 18, Sub-section (6) of Section 19, Sections 20, 21, 24(1) and (2) and Clause (f) of Sub-section 3 of Section 25 and Section 32 were unconstitutional and void. Since the operative provisions of the Act of 1971 were mainly contained in the aforementioned Sections, the Bench opined that it was not possible to

effectuate the object, purpose and scheme of the Act with the aid of the remaining provisions alone. Hence, the entire statute was declared to be ineffective and void. Admittedly, the judgment in **Krishnan**'s case has become final. Thereafter, the Act of 1978 was enacted.

6. Another decision relevant in this context is **Narayanan Namboodiri v. State of Kerala (1985 KLT 629)**. Writ petitions were filed by three worshippers of Sree Krishna Temple, Guruvayur challenging the constitutional validity of the Act of 1978.The challenge was levelled against Sections 3, 4, 5(3), 6, 14, 18, 29, 32, 33 and 35. It was pointed out that if the above provisions of the Act were found unconstitutional, then the whole Act would become unworkable. It was also urged that the entire Act should be struck down as violative of Articles 14, 25 and 26 of the Constitution. After considering the various aspects raised before the court, the Full Bench rendered a decision as shown below:

> *"(a) Clauses (d) and (e) of sub-section (1) of S.4, relating to nomination of members to the Committee by the Hindus among the Council of Ministers will be interpreted as "Hindus among the Council of Ministers having faith in temple worship";*
>
> *(b) S.32 of the Act is declared as unconstitutional and void;*
>
> *(c) S.33 will be read omitting the words "or is not in*

the interest of the Devaswom";

(d) Sub-section (2) of S.35 will be read as a proviso to sub-section (1) and the decision of the Thanthri of the temple on religious, spiritual, ritual or ceremonial matters will be final only as against the authorities mentioned in sub-section (1) of S.35; and

(e) The remaining provisions of the Act are valid and are perfectly within the competence of the State Legislature."

7. Next decision relevant for our purpose is **Gopalakrishnan Nair v. State of Kerala (1999 (3) KLT 574)**. It is a decision rendered by a Larger Bench consisting of five learned Judges. Writ petitioner challenged the procedure for election of the members to the managing committee of Guruvayur Devaswom, which according to Section 4 of the Act of 1978 has to be done by Hindus among the Council of Ministers of the State of Kerala. The matter initially came up before a Division Bench and on finding that the field is covered by the decisions of a Larger Bench and Full Benches of this Court, the Division Bench felt that the matter required an elaborate consideration by a Larger Bench comprising of five learned Judges.

8. The Larger Bench elaborately dealt with the challenges raised against the procedure to elect the members to G.D.M.C. The main relief claimed in the writ petition was to declare that Hindus among the Council of

Ministers of the Left Democratic Front have no manner of authority to nominate any member to G.D.M.C. because they had no faith in God and the temple. To buttress the petitioner's contentions, reliance was placed on **Kunhettan Thampuran, Narayanan Namboodiri, Krishnan** and some other decisions. According to the petitioner, any move initiated by them to nominate and constitute the Managing Committee will be illegal and unconstitutional under Articles 14, 21, 25 and 26 of the Constitution. Consequential reliefs were also claimed. After considering the various rival contentions, the Larger Bench dismissed the writ petition. In paragraph 18 of the judgment, the Larger Bench ruled that the observations in paragraph 12 of the judgment in **Narayanan Namboodiri**'s case, to the effect that the requirement in Article 26 of the Constitution will be satisfied only if the Hindu Ministers, among the Council of Ministers, had belief in God and temple worship, did not lay down the correct proposition of law. To this extent, the decision in **Narayanan Namboodiri** was disapproved in **Gopalakrishnan Nair**.

9. Decision by the Larger Bench was taken to the Supreme Court. The Court pronounced a judgment on 20.04.2005, which is reported in **M.P.Gopalakrishnan Nair v. State of Kerala ((2005) 11 SCC 45)**. In paragraph 40 of its judgment, the Supreme Court held that this Court in **Krishnan**'s case did not lay down any proposition of law that the person authorised to nominate the persons to the Managing Committee should

also form part of the denomination. According to the Supreme Court, the Full Bench in **Narayanan Namboodiri**'s case misread and misinterpreted the declaration of law in **Krishnan**'s case. After a detailed discussion, the Supreme Court affirmed the view of the Larger Bench in **Gopalakrishnan Nair**'s case.

Conflict of judicial opinions

10. In the order of reference, learned Judges have clearly mentioned that when the Division Bench decided W.P.(C)No.19035 of 2019 on 25.07.2019 the decision in **C.K.Rajan** was not brought to their notice. Now, we shall examine the facts and circumstances which led to the decision in **C.K.Rajan**.

11. A public interest litigation was initiated on a complaint by C.K.Rajan, sent in the name of a learned Judge of this Court, who was heading the Devaswom Bench. It highlighted the gross irregularities, corrupt practices, maladministration and mismanagement in Sree Krishna Temple, Guruvayur. A statement of the complainant was recorded by the Registrar of this Court. Thereafter, the matter was placed before the Hon'ble Chief Justice, who in turn ordered to number the complaint under Article 226 of the Constitution of India and post it before the Division Bench concerned. It is seen from the judgment that Sri.S.Krishnan Unni, District Judge officiating at that time as the Director of Training, High Court (as the learned Judge then was) was appointed the Commissioner to make a

general enquiry and in particular to make a study on the various aspects highlighted in the complaint. As directed, the Commissioner appointed by the court submitted 15 interim reports. It can be seen from the judgment that the reports were relating to various aspects of the alleged mismanagement of the Temple. Petitioner's counsel drew our attention to report no.9 of 1993 submitted by the Commissioner on 20.07.1993. It contained statements relating to the allegations regarding Panchajanyam restaurant, misapplication of Devaswom funds for non-trust purposes and misuse of car by the Administrator. A detailed discussion about interim report no.9 of 1993 can be seen in paragraph 36 of the judgment. Learned Judges, after considering various provisions in Section 27 of the Act of 1978, held thus:

> *"We also accept the finding of the Commissioner that the payments of Rs.5,000/- for Matha Sauhardha Sammelan, Rs.50,000/- to the Chief Minister's Flood Relief Fund, Rs.20,000/- to the Federation Cup Football Tournament and Rs.50,000/- to the Saksharatha were not for purposes which are directly connected with Hindu religion nor warranted or permitted by the Guruvayur Devaswom Act, 1978. The payments so made will not come within the scope of Section 27 of the Guruvayur Devaswom Act, ..."*

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The Managing Committee has no case that the payments will come within the provisions of the said section. We are of the view that the payments may be to very laudable purposes, but we have got to consider whether the payments made by the statutory authority – the Managing Committee – are authorities by law. In our view, Section 27 of the Act does not authorise the Managing Committee to make the aforesaid payments. The said payments are unauthorised and appropriate steps should be taken to realise the loss that has resulted to the Guruvayur Devaswom by such payments. We hold so."

C.K.Rajan's case was taken to the Supreme Court at the instance of G.D.M.C. As per judgment reported in **Guruvayur Devaswom Managing Committee v. Rajan ((2003) 7 SCC 546)**, the Supreme Court affirmed the decision of this Court and concluded the judgment as follows:

"The curtain of this litigation must be drawn here and now. The State admittedly implemented many of the suggestions of the High Court. They would not be reopened. Some suggestions of the High Court are pending consideration at the hands of the State. They

may be considered. The State shall, however, as regards the directions of the High Court which according to it cannot be complied with, pass appropriate orders recording sufficient and cogent reasons therefor as expeditiously as possible and not beyond a period of three months from the date of communication of this order. The High Court, if any proceeding is initiated in relation thereto, may deal therewith in accordance with law. The administration of the temple, it is stated, has been taken over by the State and the other statutory functionaries. They shall, we have no doubt in our mind, having regard to the fact that special treatment has been accorded to the temple by the State Legislature, carry out its activities in true letter and spirit thereof. The State and the statutory functionaries would be well advised to give full credence to the tenets and practices subject of course to the provisions of the statute. The State should furthermore make all endeavours to see that the sentiments of the devotees are respected. In view of our findings aforementioned, the adverse remarks made in the impugned judgment against the appellant in C.A.No.2151/1994 shall stand expunged."

12. As mentioned above, without noticing the ratio in the decision in **C.K.Rajan**'s case, another Division Bench of this Court disposed of W.P. (C) No.19035 of 2019. Following are the reliefs claimed in the writ petition:

> *"(a) quash Exts.P1 and P2 by the issue of certiorari or such other writ or order or direction.*
>
> *(b) direct the 1st respondent to return Rs.5 crores with interest from the date of receipt to the Guruvayur Devaswom Fund by the issue of a writ of mandamus or such other order or direction.*
>
> *(c) direct the 3rd respondent to pay the cost of this proceedings to the petitioner from Devaswom fund and realise the same from the members of the Managing Committee personally treating it as surcharge under Section 26 of the Act by the issue of a writ of mandamus or such other writ or order or direction."*

G.D.M.C. took the impugned decision to contribute an amount of ₹5 crores to C.M.D.R.F., as an ameliorative measure to help the Government in tiding over the grave devastation caused in the entire State of Kerala by torrential rains, consequential landslides and inundation. It is an indisputable fact that loss of human and animal life and damage to property to an unimaginable extent had happened during that period. Ext.P1 in that case was the decision taken by G.D.M.C. to contribute ₹5 crores to C.M.D.R.F.

Ext.P2 was the order ratifying the Committee's decision by the Commissioner. Both these orders were under challenge. According to the petitioner, the orders were violative of Sections 11 and 27 of the Act of 1978.

13. The Division Bench, after examining Section 11, which deals with alienation of Devaswom properties, observed that the very description of the kind of movable properties mentioned in the Section would reveal that it could not include cash. It may not be legally correct to say that "movable property", under no circumstance, will include money. A Division Bench of this Court in **Collector of Central Excise, Madras v. A.A.Dawood Al Marzook (1961 KLT 504)** in the context of Sea Customs Act, 1878, had held that goods referred to in Section 193(2) of the said Act includes money also. Decision in **Thomman Thressia v. Pothen Chacko (1957 KLT 584)** rendered by a learned single Judge in the purview of Article 89 of the Limitation Act, 1908 would indicate that "movable property" is a genus in which money also can be a species. No doubt, it depends on the phraseology in the particular statute and the context in which the word "movable property" is used. However, on a close reading of the entire Section 11 of the Act of 1978, with a special reference to Sub-sections (1), (2), (4) and (7), it will be clear that "movable property" described therein could never include money.

14. After examining the provisions in Section 27, the Bench

observed that the Section does not enumerate all the facets of authority of the Committee to incur expenditure. According to the Division Bench, the words "certain purposes" in the heading to the Section would prima facie indicate that the authority to incur expenditure was not fully listed out therein. These observations are seriously challenged by the petitioners. In short, the Division Bench took a view that there is nothing in Clauses (a) to (g) to Section 27 of the Act of 1978 which indicate that the Committee's authority is limited to incurring any expenditure in respect of the purposes specifically mentioned in the above Clauses. Without referring to **C.K.Rajan**'s case, the Bench took a view that doling out ₹5 crores, on the basis of a decision taken by G.D.M.C. which was ratified by the Commissioner, was not bad in law. Petitioners would contend that this finding is in direct conflict with the ratio in **C.K.Rajan**'s case.

Relevant pleadings in brief

15. In W.P.(C) No.20495 of 2019 (the leading case) Exts.P1, P2, P6 and P7 decisions taken by G.D.M.C., Ext.P4 proceedings of the 5th respondent (Administrator, Guruvayur Devaswom) and Ext.P5 proceedings of the 3rd respondent (Commissioner) are under challenge. According to the petitioner, all these decisions and actions thereon are illegal and beyond the powers conferred by the Act of 1978 on the authorities. Ext.P1 is the true copy of the minutes of a meeting of G.D.M.C. held on 16.08.2018 whereby the Managing Committee decided to grant ₹1 crore to C.M.D.R.F.

for helping the people who suffered extreme difficulties due to that year's monsoon floods.

16. Ext.P2 is the true copy of a decision taken by G.D.M.C. in the meeting held on 20.08.2018. As per Ext.P2, they revised Ext.P1 decision and decided to pay ₹5 crores out of Devaswom funds as an emergent assistance to the C.M.D.R.F. for the above purpose. They also decided to obtain sanction from the Commissioner.

17. Ext.P4 is the true copy of the proceedings of the Administrator, Guruvayur Devaswom dated 21.08.2018, whereby he has ordered to pay ₹5 crores to C.M.D.R.F. anticipating a sanction from the Commissioner. Ext.P5 is the true copy of the proceedings of the Commissioner according sanction to pay ₹5 crores as required under Exts.P2 and P4.

18. Ext.P6 is the true copy of the decision taken by G.D.M.C. in the meeting held on 13.09.2018 to entrust the Executive Engineer (Civil) to make arrangements at East Nada of Guruvayur Temple for receiving donations from general public to support the relief works undertaken by the Government of Kerala. Ext.P7 is the true copy of the decision of G.D.M.C. dated 25.09.2018 whereby the Committee decided to install a donation box at East Nada, Guruvayur Temple for accepting donations from general public for the initiative of the State Govenment to help the victims of natural calamity. According to the petitioner, none of the provisions of the Act of 1978, including Section 27, authorised the 3rd respondent Commissioner,

4th respondent G.D.M.C. and the 5th respondent Administrator to implement the decisions taken as above.

19. Pleadings and reliefs claimed in the other writ petitions are almost identical. Each one of the petitioners questions the authority of G.D.M.C., the Administrator and the Commissioner to give out Devaswom funds to C.M.D.R.F., which, according to the petitioners, is an act ultra vires of the Act of 1978. Besides, the illegal acts on the part of the respondents have caused violation of their fundamental rights as well.

20. In W.P.(C) No.20495 of 2019, the respondents 4 and 5 filed a counter affidavit supporting the decision taken by the Committee and the orders passed by the Commissioner to contribute ₹5 crores out of Guruvayur Devaswom funds to C.M.D.R.F. The contentions raised by the respondents in the aforementioned writ petition are adopted in the other cases too. The said respondents vehementaly denied the allegation that payment of ₹5 crores to C.M.D.R.F. is illegal. According to them, the decision of the Committee and orders passed by the Commissioner are legal and proper. None of the fundamental rights of the petitioners is affected by the decision properly taken by the respondents. According to the respondents, not only their actions are perfectly legal, but also ancient scriptures command and demand them to help the needy and deserving worshippers of Lord Guruvayurappan, who were in a state of utter distress.

Submissions

21. Heard Sri.M.A.Abdul Hakkim, learned counsel appearing for the petitioners in W.P.(C) Nos.20495 of 2019 and 9888 of 2020; Sri.K.Shri Hari Rao, learned counsel for the petitioner in W.P.(C) No.10169 of 2020; Sri.S.Sanal Kumar, learned counsel for the petitioner in W.P.(C) No.9904 of 2020; Sri.Sajeevkumar K.Gopal, learned counsel for the petitioner in W.P.(C) No.9887 of 2020; Sri.G.Sreekumar (Chelur), learned counsel for the petitioners in W.P.(C) Nos.9808 of 2020 and 9765 of 2020; Sri.V.Shyamohan, learned counsel for the petitioner in W.P.(C) No.9805 of 2020; Sri.R.Krishna Raj, learned counsel for the petitioner in W.P.(C) No.9802 of 2020; Dr.V.N.Sankarjee, learned counsel for the petitioner in W.P.(C) No.9800 of 2020 and Sri.V.Sajith Kumar, learned counsel for the petitioner in W.P.(C) No.9780 of 2020. Also heard Sri.K.V.Sohan, learned State Attorney appearing for the respondents 1 to 3 and Sri.T.K.Vipindas, learned standing counsel appearing for the respondents 4 and 5. Sri.P.B.Krishnan, learned counsel appearing for the Chairman, G.D.M.C., who is the 5th respondent in W.P.(C) No.9780 of 2020, is also heard. Perused the notes of arguments submitted by the learned counsel on behalf of some of the petitioners and respondents.

22. Shri Abdul Hakkim contended that the impugned decisions are in total violation of the provisions of the Act of 1978. According to him, diversion of Devaswom funds to C.M.D.R.F. violated the fundamental rights of the petitioners guaranteed under Articles 14, 25 and 26 of the

Constitution of India. It is also contended that payment of contribution to C.M.D.R.F., constituted by the 1st respondent State, does not come within the scope of Section 27 of the Act of 1978. It is his further contention that transfer of Devaswom funds for unauthorised purposes amounted to a serious misconduct in the administration of Devaswom within the meaning of Section 5(3)(d) of the Act of 1979. The members of the Committee are liable to be removed by the 1st respondent for the grave misconduct committed by them. According to him, there is every reason to believe that Devaswom funds landing in C.M.D.R.F. would be used for purposes other than those intended by the Act of 1978.

23. Sri.Sajith Kumar contended that a conjoint reading of Sections 10 and 11 of the Act of 1978 would show that it is the responsibility of the Managing Committee to provide facilities to worshippers and to do all things incidental to the efficient management of the affairs of Devaswom. They have no right to part with Devaswom funds in the manner they wish. Section 27 of the Act of 1978 does not empower them to act according to their whims and fancies.

24. Sri.Shri Hari Rao contended that the G.D.M.C. and the Commissioner flagrantly violated the provisions of the Act of 1978 and also the fundamental rights of the worshippers.

25. Sri.Sanal Kumar, by referring to Section 10 of the Act of 1978, contended that general character of the duties enumerated therein would

make it clear that the committee's power is confined to administer the temple properly and they have no authority to act in violation of Section 27 of the Act by handing over Devaswom funds to C.M.D.R.F. The decision to that effect is illegal.

26. Sri.Rajesh Chakyat also contended that none of the provisions under the Act of 1978 justified the actions of the respondents.

27. Dr.V.N.Sankarjee, highlighting various Clauses in Section 27 of the Act of 1978, argued that the impugned action on the part of the respondents will not fall within any of the limbs of the Section and therefore it is violative of the statutory provisions and the constitutional rights of the petitioners.

28. Sri.Krishna Raj vehementally argued that on a reading of Section 11 of the Act of 1978, it will be clear that the Commissioner can grant sanction only after publishing the details of an alienation proposed to be made in respect of movable properties belonging to Devaswom. It is his argument that Section 27 of the Act of 1978 makes it very clear that the Committee could incur expenditure only for the purposes mentioned in Clauses (a) to (g) to the Section which, according to him, are basically matters connected with the activities of Devaswom. Decision to handover ₹5 crores from Devaswom funds to C.M.D.R.F. is without any legal basis and also in violation of the constitutional rights of the petitioners.

29. Sri. G.Sreekumar also raised almost similar contentions.

Sri.Sajeevkumar K.Gopal argued that on a conjoint reading of Sections 10,11, 12 and 27 of the Act of 1978, it will be clear that the decision taken by G.D.M.C. to handover ₹5 crores to C.M.D.R.F. and ratification of the decision by the Commissioner are opposed to the provisions of the Act of 1978 and violative of the constitutional rights of the petitioners.

30. Per contra, Sri.Vipindas, learned standing counsel appearing for Guruvayur Devaswom justified the decision on the ground that it is well within the powers conferred by the statute on the authorities and it was done at the best interest of the devotees of Lord Guruvayurappan. According to him, the challenges levelled against the decision are ill-motivated.

31. Sri.P.B.Krishnan contended that the devotees of Guruvayur Temple do not form a religious denomination as understood under Article 26 of the Constitution. The rights, liabilities and duties of all the stakeholders are to be judged with reference to the Act of 1978. According to him, on a proper interpretation of Section 27 of the Act of 1978, it will be seen that it was a well meaning decision and perfectly justified under the provisions of the Act. Sri.Sohan, the State Attorney also supported the above contentions.

Scope of the order of reference

32. As mentioned above, there is an apparent conflict in the findings entered in the above decisions regarding the authority of G.D.M.C.

and the Commissioner to contribute Devaswom funds for any purpose, which they may consider a philanthropic purpose. In **C.K.Rajan**'s case, it was observed by the Division Bench that payments of ₹5,000/- for Matha Sauhardha Sammelan, ₹50,000/- to the Chief Minister's Flood Relief Fund, ₹20,000/- to the Federation Cup Football Tournament and ₹50,000/- to the Saksharatha could be very laudable, but Section 27 of the Act of 1978 did not authorise the Managing Committee to make the aforesaid payments. In clear terms, such a finding was entered in **C.K.Rajan**'s case. True, a detailed analysis of Section 27 was not attempted to in that case. Later, another Division Bench while disposing W.P.(C) No.19035 of 20019 took a view that Section 27 of the Act of 1978 enumerates some of the aspects of G.D.M.C.'s authority to incur expenditure and the word "certain" occurring in the heading of the Section was interpreted to indicate that the heads of expenditure shown therein are not exhaustive. According to the Division Bench, Clauses (a) to (g) to Section 27 do not exhaustively mention all the permissible heads of expenditure and the Committee may incur expenses for other matters as well. Of course, it was observed that the Committee has no power to dole out Devaswom funds in any manner they like. Views adopted as above are in direct conflict with one another.

33. On a careful reading of the order of reference, we are afraid, we do not find any specific points raised. Nevertheless, we churn out from the entirety of the reference order that the later Division Bench found it

difficult to agree with the view taken in **C.K.Rajan**'s case. We, therefore, legitimately deduce that the point referred is, whether the G.D.M.C. and the Commissioner have authority under the Act of 1978 to part with Devaswom funds to C.M.D.R.F., as was done as per Exts.P1, P2, P4 and P5? Legality of the action taken by the respondents will have to be determined with reference to various provisions of the Act of 1978 and with a special reference to Section 27.

34. To what extent a Full Bench can decide in a referred case? This question can be answered in the following manner. Section 6 of the Kerala High Court Act, 1958 reads thus:

> *"**Cases to be heard by Full Bench under direction by Chief Justice.**- Notwithstanding anything contained in this Act, the Chief Justice may direct that any matter be heard by a Full Bench."*

On a reading of Section 7 of the above Act, the procedure on reference to a Full Bench will be clear. It reads as follows:

> *"When a question of law is referred to a Full Bench, the Full Bench may finally decide the case or return it with an expression of its opinion upon the question referred for final adjudication by the Bench which referred the question or, in the absence of either or both of the referring Judges, by another Bench."*

35. Supreme Court in **Kerala State Science and Technology Museum v. Rambal Co. and others ((2006) 6 SCC 258)** has clearly held that when a reference is made on a specific issue either by a Single Bench or Division Bench to a Larger Bench, the latter Bench cannot adjudicate upon an issue beyond the scope of the order of reference. In paragraph 8 following observations are made:

> *"It is fairly well settled that when reference is made on a specific issue either by a learned Single Judge or Division Bench to a larger Bench i.e. Division Bench or Full Bench or Constitution Bench, as the case may be, the larger Bench cannot adjudicate upon an issue which is not the question referred to. (See Kesho Nath Khurana v. Union of India (1981 Supp SCC 38), Samaresh Chandra Bose v. District Magistrate, Burdwan (1972 (2) SCC 476) and K.C.P. Ltd. v. State Trading Corpn. of India (1995 Supp (3) SCC 466)."*

The Supreme Court expressed the same view in **Hameed T.A. v. M.Viswanathan ((2008) 3 SCC 243)** taking note of the above decision. Although we find merit in the argument raised by both the sides that the order of reference lacks clarity for not raising specific questions to be answered, what is discernible by reading the entire reference order is that a pronouncement has to be made on the authority of G.D.M.C. and the Commissioner to give away Devaswom funds for any purpose referred to in

the impugned decisions/orders.

36. Needless to mention, we cannot adjudicate on an issue which is not a question covered by the order of reference. Notwithstanding the fact that much has been argued by both the sides about the locus standi of the petitioners to approach this Court as devotees/worshippers of Guruvayur Temple, who form a religious denomination as understood under Article 26 of the Constitution, we find that such a question does not fall within the scope of the reference order. In the light of the earlier binding pronouncements, the question whether worshippers of the Temple form a religious denomination is no more res integra. Moreover, in paragraph 39 of **Krishnan**'s case (supra) the Larger Bench has ruled thus:

> *"In the case before us a contention was urged by the learned Advocate appearing for the 1st respondent - The Managing Committee of the Devaswom represented by the Administrator - that the denomination consisting of the general body of worshippers was not having any right in relation to the administration of the Guruvayoor Temple as on the date of the coming into force of the Constitution. We see no force at all in this contention. At the time when the Constitution came into force the management of the Temple was being carried on by the hereditary*

trustees in accordance with the provisions of the scheme settled by the High Court of Madras in Appeal Nos.211 and 212 of 1930 as later modified by the District Court of South Malabar in O.S.No.1 of 1933 and also in conformity with the relevant provisions contained in the Madras Hindu Religious and Charitable Endowments Act. We have already adverted to the fact that the aforementioned scheme itself came to be framed as a result of proceedings initiated by certain worshippers on whose petition the Madras Hindu Religious Endowments Board started the enquiry which culminated in the framing of the scheme. Further, in the scheme that was finally settled by the Madras High Court, sufficient safeguards were incorporated at the instance of the worshippers to ensure that there would be no maladministration of the Temple and its funds by the trustees and it was even provided that the 'Bhandarams' of the temple should be opened only after previous public notice to the worshippers and only in the presence of the worshippers who cared to be present and that at least two of the worshippers should attest the formal entries

relating to the actual receipts in cash and kind obtained from the 'Bhandarams'. The provisions of the Madras Hindu Religious Endowments Act, 1926 which governed the Temple at the time of the commencement of the Constitution fully recognised the rights of the worshippers to intervene for the purposes of preventing mismanagement. S.9(9) of that Act defined the expression "person having interest" in the case of a temple as a person who is entitled to attend at the performance of worship or service in the temple and who is in the habit of attending such performance. It was mandatory under the provisions of that Act to give notice to 'persons interested' (worshiping public) and to hear their representations before any action of consequence, such as the framing of a scheme, the sanctioning of alienations of temple properties etc. was taken by the Board in relation to the temple and its properties.(See Ss.57, 67, 76, etc.) Right was also specifically reserved to 'persons interested' to move the court for modifying a scheme already settled in respect of a temple (S.65) and also to institute suits in the competent court praying for reliefs of the nature

mentioned in S.92, CPC. (S.73). In the case of the Guruvayoor Temple it has already been seen that the worshipping public had been asserting and exercising their rights under the Madras Hindu Religious Endowments Act and the scheme itself was originally framed by the Board on the petition filed by some worshippers. Not being satisfied with the provisions contained in the scheme framed by the Board, certain worshippers, 24 in number, instituted O.S.2 of 1929 in the District Court of South Malabar to amend the said scheme. A.S.No.212 of 1930 was an appeal filed in the Madras High Court by the hereditary trustee Zamorin Raja against the decree passed in that suit. It cannot therefore be said on the facts of this case that the denomination had either surrendered or lost its rights in relation to the administration of the Temple and its properties by any process known to law prior to the commencement of the Constitution."

(underline supplied by us)

Besides, the scope of Article 26 of the Constitution vis-a-vis the claims of the petitioner in O.P.No.314 of 1973 was considered by the Larger Bench in paragraphs 34 to 36 and 61. Indeed, the peremptory decision in

Krishnan's case has become final. As pointed out by Dr.V.N.Sankarjee, the learned counsel for one of the petitioners, legal propositions laid down by another Larger Bench in **Gopalakrishnan Nair**'s case, which was affirmed by the Supreme Court, are in relation to Section 4(1) of the Act of 1978 and the scope of Section 27 did not arise at all for consideration in that decision. That apart, the Larger Bench, which decided **Gopalakrishnan Nair**'s case, could not have deviated from the relevant findings in **Krishnan**'s case because a co-equal Bench is bound by the earlier decision. Since the question whether the worshippers of Lord Guruvayurappan form a religious denomination has been decided by a binding precedent and this aspect is not being a question covered by the order of reference, we refrain from answering such a question over and over again.

Ratiocination

(a) Fundamental ideas underlying Hindu religious trusts:

37. We may refer to the basic tenets relating to Hindu Law of religious trusts in order to lay a proper foundation for the discussion, "**The Hindu Law of Religious and Charitable Trusts**"(Tagore Law Lectures) is a seminal work by His Lordship **Justice B.K.Mukherjea**, former Chief Justice of India. This book is considered to be a *locus classicus*. Learned author says at page 11 (5th Edition) that in the Hindu system there is no line of demarcation between religion and charity. On the other hand, charity is

regarded as a part of religion. Learned author further says at page 24 that it is difficult to say at what period of time idol worship was introduced among the Hindus. It is his opinion that the idols represent the same divinity and different images do not represent separate divinities; they are really symbols of the one Supreme Being. In worshipping the image, therefore, the Hindu purports to worship the Supreme Deity and none else.

38. Word "Debutter" in the context of a religious trust means an endowment in favour of an idol. Debutter property essentially means that kind of a property that has been dedicated to God. A "Shebait" is any person who serves and supports the deity and works as a manager of the Debutter property. Temple or any other land or property which is vested in the deity are managed by a Shebait. At pages 201 and 202 the learned author says:

> *"It would seem to follow," the Judicial Committee observed in Prosonna Kumari Debya v Golab Chand Baboo ((1875) LR 2 IA 145) "that the person so entrusted must, of necessity, be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property, at least to as great as the manager of an infant heir. If this were not so, the estate of the idol might be destroyed or wasted, and its worship discontinued for want of necessary funds to preserve and*

maintain them." This human ministrant of the deity, who is its manager and legal representative, is known by the name of Shebait in Bengal and Northern India. He is called the Dharmakarta in the Tamil and Telugu districts, Panchayetdar in places like Tanjore and Urallen in Malabar. He is the person entitled to speak on behalf of the deity on earth and is endowed with authority to deal with all its temporal affairs. As regards the temple property, the manager is in the position of a trustee, but as regards the service of the temple and the duties that appertain to it he is rather in the position of the holder of an office of dignity (Ramanathan Chetti v. Murugappa ((1906) LR 33 IA 139)"

39. According to the Hindu Law principles, the duties of a Shebait could be both spiritual and temporal. Regarding the legal position of a Shebait or manager, it is observed by the learned author that a Shebait is not a trustee in the English sense. Following observations at pages 203 and 204 will clarify the idea:

"The exact legal position of a Shebait or manager cannot be said to be altogether beyond the range of controversy, though much of the earlier theories has now been discarded. It is now settled by the pronouncement of

the Judicial Committee in Vidyavarathi v. Balusami (LR 48 IA 302) that the relation of a Shebait in regard to the Debutter property is not that of a trustee to trust property under the English law. In English law the legal estate in the trust property vests in the trustee who holds it for the benefit of the cestui que trust. In a Hindu religious endowment, the entire ownership of the dedicated property is transferred to the deity or the institution itself as a juristic person, and the Shebait or Mahant is a mere manager. "A trust" thus runs the judgment of the Judicial Committee "in the sense in which the expression is used in English law, is unknown in the Hindu system pure and simple. Hindu piety found expression in gifts to idols and images consecrated and installed in temples, to religious institutions of every kind, and for all purposes considered meritorious in the Hindu social and religious system ..... Under the Hindu law the image of a deity of the Hindu pantheon is ..... a juristic entity, vested with the capacity of receiving gift and holding property. Religious institutions known under different names are regarded as possessing the same juristic capacity and gifts are made to them eo nomine. In many cases in Southern India,

especially where the diffusion of Aryan Brahminism was essential for bringing the Dravidian people under the religious rule of the Hindu system, colleges and monasteries under the name of Math were founded under spiritual teachers of recognized sanctity. When a gift is directly to an idol or temple, the seisin to complete the gift is necessarily effected by human agency. Called by whatever name, he is only the manager and custodian of the idol or the institution. In almost every case he is given right to a part of the usufruct, the mode of enjoyment and the amount of the usufruct depending again on usage and custom. In no case was the property conveyed to or vested in him, nor is he a 'trustee' in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for maladministration." ....."

(underline supplied by us)

40. Learned author deals with the administration of Debutter and the rights, duties and powers of Shebaits in Chapter 6. Following passage enunciated by the learned author by way of summing up the discussion may be relevant for our purpose:

***"Points summed up.** - The result of the*

foregoing discussion may be summed up as follows :

(1) An idol is a juristic person in whom the title to the properties of the endowment vests; but it is only in an ideal sense that the idol is the owner. It has to act through human agency and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might, therefore, in one sense, be said to be merged in that of the Shebait.

(2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol, then there must be some other agency which must have the right to act for the idol. In such cases, the law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol.

....."

Other points summed up are omitted as they do not relate to the controversy in our case.

41. Another point is regarding the Shebait's right to delegate his authority. It is a fundamental principle that a Shebait cannot delegate his

duties to another, no matter whether such other is a stranger or a co-trustee. This is exactly similar to the principles under English law relating to trusts. We shall quote a passage from pages 274 and 275 of **Justice B.K.Mukherjea**'s aforementioned work:

> *"**Shebait cannot delegate his authority**.- A Shebait, like a trustee in English law, cannot delegate his duties to another, no matter whether such other is a stranger or a co-trustee. The rule is founded on the maxim "Delegatus non potest delegare." The meaning and implication of this rule were thus explained by Bowen, L.J, in Re, Speight, Speight v Gaunt (22 Ch.D 727): "The proposition as to trustees or agents that they cannot delegate means this simply that a man employed to do a thing himself has not the right to get somebody else to do it, but when he is employed to get it done through others, he may do so." In cases, therefore, where a trustee is entrusted to do a particular thing himself, he cannot authorise somebody else to exercise judgment on his behalf. It is open to a trust to appoint a subagent or avail himself of the services of others, whenever such employment is according to the normal course of*

business, but such appointment must only be as a means of carrying out his own duties himself and not for the purpose of delegating those duties by means of such appointment."

42. We may now refer to a Constitution Bench decision in **Deoki Nandan v. Murlidhar and others (AIR 1957 SC 133)** wherein the apex Court was called upon to decide whether Thakurdwara of Sri Radhakrishnaji is a public endowment or a private one. After examining various scriptures and discussing about various legal principles, the Supreme Court held that the distinction between a private and public trust is that in the former the beneficiaries are specific individuals and in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment. Regarding the juristic personality of an idol, the Supreme Court laid down following propositions of law in paragraph 6:

"Then the question is, who are the beneficiaries when a temple is built, idol installed therein and properties endowed therefor? Under the Hindu law, an idol is a juristic person capable of holding property and the properties endowed for the institution vest in it. But does it follow from this that it is to be regarded as the

beneficial owner of the endowment? Though such a notion had a vogue at one time and there is an echo of it in these proceedings (vide para 15 of the plaint), it is now established beyond all controversy that this is not the true position. It has been repeatedly held that it is only in an ideal sense that the idol is the owner of the endowed properties. Vide Prosunno Kumari Debya v. Golab Chand Baboo, 2 Ind. App.145 at p.152 (P.C.) (C); Jagdindra Nath Roy v. Rani Hemanta Kumari Debi, 31 Ind.App.203 (P.C.)(D) and Pramatha Nath Mullick v. Pradyumna Kumar Mullick 52 Ind.App.245: (A I R 1925 P C 139) (E). It cannot itself make use of them; it cannot enjoy them or dispose of them, or even protect them. In short, the idol can have no beneficial interest in the endowment. ....."

After referring to some relevant Sanskrit texts, the Court further held as follows:

"Thus, according to the texts, the Gods have no beneficial enjoyment of the properties, and they can be described as their owners only in a figurative sense (Gaunartha), and the true purpose of a gift of properties to the idol is not to confer any benefit on God, but to

acquire spiritual benefit by providing opportunities and facilities for those who desire to worship. .....

7. When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers, the question whether an endowment is private or public presents no difficulty. ....."

43. **Justice B.K.Mukherjea** at page 158 of the above mentioned treatise observed thus:

"A Hindu idol is, according to long-established authority, founded upon the religious customs of the Hindus, and the recognition thereof by courts of law, a 'juristic entity'. It has a juridical status, with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who in law is its manager, with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established."

Sri.G.Sreekumar (Chelur), learned counsel for one of the petitioners relying

on the Constitution Bench decision of the apex Court in **M.Siddiq (Ram Janmabhumi Temple) v. Suresh Das ((2020) 1 SCC 1)** submitted that idols consecrated in Temples have juristic personality. In the above case, the Constitution Bench, after having a long discussion on various legal issues relating to the idol's juristic personality, held in paragraph 140 thus:

> *"The decision in Manohar Ganesh Tambekar v. Lakhmiram Govindram, ILR (1888) 12 Bom 247) indicates that the expression of a religious or charitable purpose and the creation of an endowment to effectuate it was adequate. The creation of a trust, as in English law was not necessary. The creation of an endowment resulted in the creation of an artificial legal person. The artificial or juridical person represents or embodies a pious or benevolent purpose underlying its creation. Legal personality is conferred on the pious purpose of the individual making the endowment. Where the endowment is made to an idol, the idol forms the material representation of the legal person. This juridical person (i.e. the pious purpose represented by the idol) can in law accept offerings of movable and immovable property which will vest in it. The legal personality of the idol, and the rights of the idol over the property endowed and the*

offerings of devotees, are guarded by the law to protect the endowment against maladministration by the human agencies entrusted with the day-to-day management of the idol.

In the above decision, excerpts from **Justice B.K.Mukherjea**'s treatise are quoted aplenty.

44. Indisputably, the worshippers of temples have certain privileges and rights. They are often called the beneficiaries. But they are not beneficiaries in the sense that they have any beneficial ownership in the endowed properties, as in the case of a *cestui que trust* in a trust. Worshippers are beneficiaries in a spiritual sense. Right to worship is a civil right, of course in an accustomed manner and subject to the practise and tradition in each temple.

45. Now, we sum up this discussion thus: There cannot be a dispute that the properties belonging to Sree Krishna Temple, Guruvayur and the income derived therefrom, including the endowments and offerings, are vested in the deity. Larger Bench in **Krishnan**'s case at paragraph 56 clearly held that both under the law relating to Hindu Religious Trusts and also under the custom, usage and tradition governing the institution, the properties of the Guruvayur Temple and the income derived therefrom are vested in the deity. This was discussed in the context of the Act of 1971 which, according to the Larger Bench, had tented to divest the idol/deity of

its proprietary right. That was one of the reasons for striking down the Act of 1971. We, therefore, have no doubt to find that the properties both movable and immovable, including funds belonging to Devaswom, vest with the deity.

46. Another important feature to be noted here is that the role of G.D.M.C. indisputably is that of an erstwhile *Uralan* or a Shebait or a manager, by whatever name it is described. This will be very much clear from the discussion we made in the earlier paragraphs relating to the administrative set up prevalent in the Temple at various times. Starting from the Zamorin Raja of Kozhikode and the Karanavan of Mallisseri Illom at Guruvayur we have seen the developments upto the enactment of the Act of 1971. After striking down Act of 1971, the present Managing Committee was constituted as per the Act of 1978 to manage the Temple and its properties. From the long title and preamble to the Act of 1978, the purpose of the Act and the role of G.D.M.C. will be clear. Therefore, there cannot be any dispute to the proposition of law that G.D.M.C. is constituted under the Act of 1978 for manging the affairs of Guruvayur Devaswom and its position vis-a-vis the Temple is that of a trustee managing the properties, vested in the idol, for the benefit of the worshippers. Hence G.D.M.C. certainly will have all the duties and obligations attached to the office of a trustee as mentioned above.

(b) <u>Scrutiny of the provisions under the Act of 1978:</u>

47. Act of 1978 commenced on 29.11.1977 though it received the assent of the President only on 18.03.1978. This could be because of the fact that the judgment in **Krishnan**'s case was pronounced by the Larger Bench on 15.11.1977 and it was observed therein that in the interests of justice operation of the judgment stood stayed for a period of two weeks in order to allow a reasonable time to the State to take such steps required in the light of the pronouncement. This must have been done to avoid any vacuum in the administration of the Temple.

48. We shall now venture to interpret the various provisions in the Act of 1978. It is to be borne in mind that the constitutional validity of the Act was tested and affirmed in an earlier round of litigation. Needless to mention, the Act being a post-constitutional enactment, the court is bound to start with a presumption that it is constitutionally valid. In this case, it has already been held so. Since the Act deals with the administration of a Hindu religious institution, it should be interpreted in accordance with the principles relating to statutory interpretations and the settled legal principles governing the administration of Hindu religious trusts. It is to be remembered that though administration of the Temple is a secular act, the property and funds belonging to the Temple are religious trust properties. So, the managers of religious trusts should adhere to the legal principles when dealing with trust properties. Therefore, the provisions in the Act cannot be interpreted in terms of constitutional morality, ignoring the

relevant legal principles.

49. To begin with, we shall excerpt a passage from the decision of the Supreme Court in **Reserve Bank of India v. Peerless General Finance and Investment Co.Ltd. and others ((1987) 1 SCC 424)** which throws considerable light regarding the rules of interpretation of statutes.

> *"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each*

word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. ....."

50. We are bound by a recent Full Bench decision of this Court in **Sadasivan K. v. Surendradas (2020 (5) KHC 461)** rendered by us thus:

"39. In order to gather the intention of the legislature, it is a basic principle, the statute must be read as a whole. Another important rule of statutory interpretation is that if meaning of the words employed in a provision is plain, effect must be given to it irrespective of the consequences. It has been consistently held that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said.

40. Another important principle is that rejection of words employed in a statute should be avoided. In Aswini Kumar Ghose and another v. Arabinda Bose and another (AIR 1952 SC 369) the law declared by a Constitution Bench is thus:

"It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute."

Another Constitution Bench in Union of India and another v. Hansoli Devi and others (AIR 2002 SC 3240) held thus:

"It is a cardinal principle of construction of statute when language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute and it would not be open to the Courts to adopt a hypothetical construction of the ground that such construction is more consistent with the alleged object and policy of the Act. It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the Court may look into the purpose for which the statute has been brought and would try to give a meaning which would adhere to the purpose of the statute.

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It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage. If they can have appropriate application in circumstances conceivably within the contemplation of the statute. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the Court to reject the surplus words so as to make the statute effective."

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41. Importantly, the legislature is deemed not to waste its words or to say anything in vain (Quebec

Railway, Light, Heat and Power Company Limited v. Vandry and others (AIR 1920 PC 181). This principle has been approved in Union of India and another v. Hansoli Devi and others (supra)."

51. In the preamble to the Act of 1978, we find six paragraphs. We shall quote paragraphs 4 to 6 which are relevant for our discussion:

"AND WHEREAS the High Court of Kerala in its judgment in Original Petition No.314 of 1973 struck down the operative provisions of the said Act on the ground that those provisions are violative of articles 25 and 26 of the Constitution of India ;

AND WHEREAS it is apprehended that if the administration, control and management of the Temple and its properties and endowments are vested in the hereditary trustees, the same situation which had rendered it expedient to reorganise the scheme of management of the affairs of the Devaswom and to enact the said Act is likely to arise ;

AND WHEREAS it is expedient to provide in the public interest and in the interest of the worshippers of the Temple for a proper administration of the said Devaswom in accordance with the law as laid down in

the said judgment ;"

These paragraphs will clearly show that the authorities constituted under the Act, especially G.D.M.C., the Administrator and the Commissioner, are enjoined with duty to administer, control and manage the affairs of the Temple, its properties and endowments.

52. In the Act of 1978, we do not find any definition for the expressions "worshipper" or "pilgrim". In the absence of any clear definition in the statute, we have to rely on standard English dictionaries to understand the meaning of these terms. "Worshipper", according to **Oxford Dictionary**, is a person who shows reverence and adoration for a deity. **Cambridge Dictionary** defines the word "worshipper" as someone who worships and performs religious ceremonies to a particular God or object. **Macmillian Dictionary** defines the word "worshipper" as someone who worships a God. So, there is no difficulty in understanding the meaning of the word "worshippers" in the context of the Act of 1978.

53. Word "pilgrim", according to **Cambridge Dictionary**, means a person who makes a journey, often a long and difficult one, to a special place for religious reasons. **Oxford Dictionary** defines the word "pilgrim" as a person who journeys to a sacred place for religious reasons. **Merriam Webster** defines the word "pilgrim" as one who travels to a shrine or holy place as a devotee.

54. If we consider the above meanings given to the words

"worshipper" and "pilgrim", it can be deduced therefrom that a "worshipper" can either be a person who visits the temple for darsan or one who stays at home and prays to God with adoration and reverence, whereas a "pilgrim" undertakes a journey as a devotee to a sacred place for worship.

55. We have seen in the last paragraph of the preamble to the Act of 1978 that the legislature felt it expedient to provide, in the public interest and in the interest of the worshippers of the temple, for a proper administration of the Devaswom in accordance with the law as laid down in **Krishnan**'s case. In this context, it is important to notice the phrases "public interest" and "interest of the worshippers of temple". "Public interest" need not always be the same as the interest of the worshippers. Public interest could be merely on secular reasons. Whereas, the worshippers' interest will be a wider interest which may take in both public interest and religious or spiritual interest. This will be all the more clear if we understand the unchallengeable proposition that the administration of a religious institution is regarded as a secular act. The Supreme Court in **Pannalal Bansilal Pitti v. State of A.P. (1996) 2 SCC 498)** in paragraph 20 held thus:

> *"It would thus be clear that the right to establish a religious institution or endowment is a part of religious belief or faith, but its administration is a secular part which would be regulated by law appropriately made by*

the Legislature. The regulation is in respect of the administration of the secular part of the religious institution or endowment, and not of beliefs, tenets, usages and practices, which are an integral part of that religious belief or faith."

Supreme Court in **Gopalakrishnan Nair**'s case (supra) reiterated the above view:

"The management or administration of a temple partakes of a secular character as opposed to the religious aspect of the matter. The 1978 Act segregates the religious matters from secular matters. So far as religious matters are concerned, the same have entirely been left in the hands of the "Thanthri". He is the alter ego of the deity. He gives mool mantra to the priests. He holds a special status. He prescribes the rituals. He is the only person who can touch the deity and enter the sanctum sanctorum. He is the final authority in religious matters wherefor a legal fiction has been created in Section 35 of the Act in terms whereof the Committee or the Commissioner or the Government is expressly prohibited from interfering with the religious or spiritual matters pertaining to the Devaswom. His decision on all

religious, spiritual, ritual or ceremonial matters pertaining to the Devaswom is final unless the same violates any provision contained in any law for the time being in force.

....."

In the same judgment, in paragraph 31, it has been clearly ruled that the State has the requisite jurisdiction to oversee the administration of a temple subject to Articles 25 and 26 of the Constitution. Further, in paragraph 34, it has been held that the freedom guaranteed under Article 25 of the Constitution is not an unconditional one and a distinction exists between the matters of religion on the one hand and holding and managing the properties of religious institutions on the other. In paragraph 36, the Supreme Court further said that although State cannot interfere with the freedom of a person to profess, practise and propagate his religion, the secular matters connected therewith can be the subject matter of control by the State. In paragraph 45, it has been laid down thus:

"..... The Temple is visited by millions every year. Apart from proper management of the funds flowing from these devotees, the Devaswom also owns other properties, runs a college, a guest house, choultries, etc., all of which require efficient and prompt management. This is quite apart from the spiritual management dealing with the religious side which is

under the sole control, management and guidance of the Thanthri. It is the secular aspect of the management that is vested in the Management Committee."

Normally, G.D.M.C. may take care of public interest by performing purely secular duties like disbursement of salary, collection of rents and profits, discharging contractual obligations, etc. Worshippers' interest will encompass within its limits the public interest and, in addition to that, the religious rights as well. In other words, a worshipper, being a member of the public, has interests in dual capacity, viz; both secular and religious.

56. Section 2 defines various terms used in the Act of 1978. According to Section 2(a), "Administrator" means the Administrator appointed under Section 14. When we look at Section 14, it can be seen that the Committee can appoint an Officer of the State Government not below the rank of Deputy Collector to be the Administrator of the Devaswom. His conditions of service have been mentioned in Section 15. Section 2(b) defines the "Commissioner" as an Officer not below the rank of Secretary to Government, who professes the Hindu Religion and believes in temple worship, appointed by the Government by notification in the Gazette. According to Section 2(c), "Committee" means G.D.M.C. constituted under Section 3. It is clear from Section 3 that the function of the Committee is to administer, control and manage the Devaswom including its properties. It will be further clear from Sub-section (2) that

G.D.M.C. is a body corporate and shall have a perpetual succession and a common seal.

57. Composition of G.D.M.C. can be seen from Section 4(1) of the Act, which reads as follows:

> ***"4. Composition of Committee.-***
>
> *1. The Committee shall consist of the following members, namely :-*
>
> *(a) the Zamorin Raja;*
>
> *(b) the Karanavan for the time being of the Mallisseri Illom at Guruvayoor;*
>
> *(c) the Thanthri of the Temple, ex-officio;*
>
> *(d) a representative of the employees of the Devaswom nominated by the Hindus among the Council of Ministers;*
>
> *(e) not more than five persons, of whom one shall be a member of a Scheduled Caste, nominated by the Hindus among the Council of Ministers from among persons having interest in the Temple."*

Section 17(1) shows that the Administrator shall be the Secretary of the Committee and its Chief Executive Officer. Subject to the control of the Committee, he shall have powers to carry out the Committee's decisions in accordance with the provisions of the Act.

58. Section 10 of the Act of 1978 deals with the duties of the Committee. Interestingly, it does not speak about any right. We shall quote the provision for clarity:

> *"**10. Duties of Committee**.- Subject to the provisions of this Act and the rules made thereunder, it shall be the duties of the Committee*
>
> *(a) subject to the custom and usage in the Temple, to arrange for the proper performance of the rites and ceremonies in the Temple and the subordinate temples attached thereto in accordance with the dittam or scale of expenditure fixed for the temple and the subordinate temples under section 20 or, till the dittam or scale of expenditure is fixed under that section, in accordance with the dittam or scale of expenditure fixed for the Temple and the subordinate temples under section 51 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act XIX of 1951);*
>
> *(b) to provide facilities for the proper performance of worship by the worshippers;*
>
> *(c) to ensure the safe custody of the funds, valuable securities and jewelleries and the preservation and management of the properties vested in the Temple;*

(d) to ensure maintenance of order and discipline and proper hygienic conditions in the Temple and the subordinate temples attached thereto and of proper standard of cleanliness and purity in the offerings made therein;

(e) to ensure that the funds of the endowments of the Temple are spent according to the wishes so far as may be known of the donors;

(f) to make provision for the payment of suitable emoluments to the salaried staff of the Devaswom; and

(g) to do all such things as may be incidental and conducive to the efficient management of the affairs of the Devaswom and the convenience of the worshippers.

As mentioned in the earlier paragraphs, Section 11, relating to alienation of Devaswom properties, may not be relevant for this case, except to state that there is no unbridled right, either to the Committee or to the Commissioner, to deal with movable assets belonging to Devaswom.

59. Powers relating to borrowing and lending are regulated by Section 12.

60. Chapter III of the Act of 1978 deals with administration and establishment. In this Chapter, the appointment of Administrator, his

conditions of service, his powers, etc. are dealt with. Section 20 relating to fixing of standard scales of expenditure is relevant in this context. It reads as follows:

> *" **Fixing of standard scales of expenditure.-***
>
> *(1) The Committee may, from time to time, submit to the Commissioner proposals for fixing the dittam or scale of expenditure in the Devaswom, and the amounts which should be allotted to the various objects connected with the Devaswom or the proportions in which the income or other property of the Devaswom may be applied to such objects.*
>
> *(2) The Committee shall publish such proposals at the premises of the Devaswom and in such other manner as the Commissioner may direct, together with a notice stating that within one month from the date of such publication any person having interest in the Temple may submit objections or suggestions to the Commissioner.*
>
> *(3) If, on a scrutiny of such proposals, and any objections and suggestions made by persons having interest in the Temple, it appears to the Commissioner that the scale of expenditure or any item in the scale of*

expenditure is at variance with the established usage of the Devaswom, or is not justified by its financial position, the Commissioner may call for the remarks of the Committee and if, after considering the same, the Commissioner is of the opinion that any modification is required in the scale of expenditure or any item in the scale of expenditure, he shall pass orders accordingly, and such orders shall, subject to the provisions of sub-section (4), be final.

(4) The Committee may, within three months from the date of receipt by it of the order passed by the Commissioner under sub-section (3), institute a suit in the court to modify the order or to set it aside."

It will be clear from Section 20(1) that the Committee may, from time to time, submit to the Commissioner the proposals for fixing *dittam* or scale of expenditure in the Devaswom and the amounts which should be allotted to the various objects connected with the Devaswom or the proportions in which the income or other property of the Devaswom may be applied to such objects. It is mentioned in Sub-section (2) to Section 20 that the Committee shall publish such proposals at the premises of the Devaswom in such manner as the Commissioner may direct together with a notice stating that within one month from the date of publication any person

having interest in the Temple may submit objections or suggestions to the Commissioner. According to the learned counsel for the petitioners, these provisions will give a clear indication about the checks and balances in expending Devaswom funds. Petitioners, therefore, contend that Section 27 should be read and understood in the light of the matters specified in Section 20 as well.

61. Chapter IV deals with budget, account and audit. Most important provision in Chapter V is Section 27. Whole gamut of the controversy centres around this provision. We shall, therefore, extract Section 27 of the Act of 1978:

> ***"Authority of Committee to incur expenditure for certain purposes.-***
>
> *The Committee may, after making adequate provision for the purposes referred to in sub-section (2) of section 21, incur expenditure out of the funds of the Devaswom for all or any of the following purposes, namely :-*
>
> *(a) maintenance, management and administration of the Temple, its properties and the temples subordinate thereto ;*
>
> *(b) training of archakas to perform the religious worship and ceremonies in the Temple and the*

temples subordinate thereto ;

(c) medical relief, water supply and other sanitary arrangements for the worshippers and the pilgrims and construction of buildings for their accommodation;

(d) culture and propagation of the tenets and philosophy associated with the Temple;

(e) the establishment and maintenance of or the making of any grant or contribution to, any poor home or other similar institution which is maintained for the benefit mainly of persons belonging to the Hindu Community;

(ee) the construction of buildings connected with the affairs of the Devaswom;

(f) the establishment and maintenance of any educational institution which provides for encouragement of education in the Sanskrit or Malayalam Language or the maintenance of any such educational institution owned or managed by the Devaswom or in which the Devaswom has interest; and

(g) the making of any contribution to any religious

institution :

Provided that nothing contained in clause (e) shall prevent the continuance of any grant or contribution to any poor home or other similar Institution which is maintained by or for the benefit of persons other than those belonging to the Hindu community, if such grant or contribution was being made to such poor home or institution before the commencement of this Act as the customary practice associated with the Temple.

Provided further that no expenditure shall be incurred for any of the purposes mentioned in clauses (f) and (g) unless the same is sanctioned by custom or practice associated with the Temple."

62. Sri.Abdul Hakkim, learned counsel for the petitioner in the leading case, contended that in Exts.P2 and P3, G.D.M.C. and the Commissioner respectively took a view that it is the moral obligation of the Devaswom to extend maximum help, from out of the Devaswom funds, to the people in the State of Kerala suffering from natural calamity caused by the floods. Pertinently, the decision was taken for the welfare of the general public in the State. In other words, the decision was not taken considering the benefit of the worshippers or pilgrims. No such mention can be seen

from Exts.P2 and P3. Absence of the words "worshippers" and "pilgrims" in Exts.P2 and P3 will prove this aspect. According to him, the so called "moral obligation" referred to in Exts.P2 and P3, cannot be justified under any of the limbs to Section 27 of the Act of 1978. Per contra, Sri.P.B.Krishnan justified the payment under Exts.P2 and P3 and further contended that the only dispute possible in this case is whether G.D.M.C. did act ultra vires of the Act of 1978. True, that is the essential question to be decided in this case. Now, we shall analyse Section 27.

63. Since Section 27 opens with a reference to Section 21, we shall consider the latter Section too. Section 21 deals with budget for the expenditure of Devaswom. Sub-Section (1) of Section 21 says that the Committee shall, before the end of March in each financial year, submit to the Commissioner, in such form as may be fixed by him, a budget estimate of the receipts and expenditure of the Devaswom for the following financial year. Sub-section (2) prescribes the heads for which adequate provisions should be made in the budget. They are

(a) the *dittam* or scale of expenditure for the time being in force,

(b) the due discharge of all liabilities binding on the Devaswom,

(c) the construction, repair, maintenance and renovation of buildings connected with the Devaswom, and

(d) the maintenance of a working balance.

Sub-section (3) empowers the Commissioner to approve the budget

proposals with or without alteration or addition. He shall send a copy of the budget approved by him to the Government.

64. Section 27 of the Act of 1978 authorises G.D.M.C., subject to Section 21(2), to incur expenditures out of the funds of Devaswom for all or any of the purposes mentioned in the various Clauses thereto.

65. Learned counsel for the petitioners vehemently attacked the observations in the judgment in W.P.(C) No.19035 of 2019 on the ground that Section 27 was wrongly interpreted by the Division Bench. To appreciate the rival contentions, we shall quote paragraph 10 from the judgment:

> *"10. Section 27 thus deals with the authority of the Committee to incur expenditure for certain purposes. Going by the said provision, the Committee may, after making adequate provision for the purposes referred to in sub-section (2) of Section 21 incur expenditure out of the funds of the Devaswom on all or any of the purposes mentioned under Clauses (a) to (g) therein. The very caption of the Section, 'Authority of Committee to incur expenditure for certain purposes' would prima facie indicate that the Section dealt with the authority to incur expenditures not exhaustively, but for certain purposes only. True that head-note cannot*

be conclusive and cannot be taken as determinative of the scope of power imbedded in an empowering provision in a statute. Certainly, in that regard, the contents of the relevant provision have to be analysed. But before that, one aspect has to be taken note of. Section 27, as already noted, deals with the authority of the Committee to incur expenditure for certain purposes and it is not a provision specifically prohibiting incurring of expenses for any other purpose. In such circumstances, if there is nothing in Clauses (a) to (g) in Section 27 of the Act indicating that the Committee got authority only to incur expenses in respect of the purposes very specifically mentioned under Clauses (a) to (g) thereunder, then the word 'certain purposes' used in the head-note of Section 27 can be taken as a clear indicative of the non-exhaustive nature of items/issues wherein the Committee can have authority to use the funds of the Devaswom. We may hasten to add that we are not indicating that the Committee is having power to dole out the funds of the Devaswom in any manner they like. In the decision in Dr.Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte and others [AIR 1996 SC

1113], the Apex Court held that ordinarily Hindutwa is understood as a way of life or a state of mind and it is not equated with or understood as religious Hindu fundamentalism. Further, it was held "the word 'Hindutva' is used and understood as a synonym of 'Indianisation' i.e., development of uniform culture by obliterating the differences between all the cultures co-existing in the country". Hindu religion is said to have born out of the principles of Sanathana Dharma. Hinudism is all about bestowing attention to everything with great reverence and perceiving what best can be done. All the aforesaid matters are to be borne in mind while considering the aforesaid question."

66. With respect, we are of the considered view that we cannot agree with the observations by the Division Bench made after referring to the caption to Section 27, viz., "Authority of Committee to incur expenditure for certain purposes". According to the Bench, it would prima facie indicate that the Section dealt with the authority to incur expenditure not exhaustively and the word "certain purposes" used in the heading to Section 27 could be taken as a clear indication of the non-exhaustive nature of items wherein the Committee could have authority to expend Devaswom funds. In other words, the word "certain" occurring in Section 27

was incorrectly interpreted by the Division Bench. We shall show the reasons as to how the mistake had crept in while interpreting the scope of Section 27.

67. **Webster's New Riverside University Dictionary** defines the word "certain" as (i) definite; fixed, (ii) sure to happen, (iii) established beyond question or doubt, (iv) unfailing; sure and (v) confident; assured.

68. **Oxford Advanced Learner's Dictionary** defines the word "certain" as (i) settled; of which there is no doubt and (ii) convinced; having no doubt; confident. **Black's Law Dictionary** defines the above term more appropriately thus:

> *"Certain. Ascertained; precise; identified; settled; exact; definitive; clearly known; unambiguous; or, in law, capable of being identified or made known, without liability to mistake or ambiguity, from data already given. Free from doubt."*

69. On a reading of the Act of 1978 in its entirety, as required under the rules of Interpretation of Statutes, and Section 27 in particular, we find no reason to understand "certain purposes" mentioned in the heading to Section 27 in a sense that it could comprise matters other than those specified therein. Stated differently, in Section 27 the authority of the Committee to incur expenditure and the heads of such expenditure are clearly, specifically and definitively shown. Further, no other expenditure,

which is not provided under Section 27, can be incurred by the Committee as per the scheme of the Act and also from the mandate of Section 27. To this extent, the view taken by the Division Bench in the above Writ Petition is legally incorrect.

(c) Arguments based on Section 27 of the Act:

70. We shall rivet our attention to various Clauses in Section 27. Section 27(a) empowers the Committee to incur expenditure for maintenance, management and administration of the Temple and its properties and the Temples subordinate thereto. No one can have any ambiguity regarding the specific purposes mentioned in the Sub-section. In this case, there is no issue regarding the applicability of Clause (a) to Section 27.

71. Likewise, Section 27(b) authorises the Committee to incur expenditure for training *archakas* to perform the religious worship and ceremonies in the Temple and the Temples subordinate thereto. Here also the terms are quite unambiguous and therefore, no room for any doubt. Sri.P.B.Krishnan appearing for the Chairman, G.D.M.C. submitted a list showing the names of 11 Temples which are subordinate to Guruvayur Temple. The list reads thus:

1. Vermanur Siva Kshethram, Kunissery, Palakkad
2. Poonthanam Mahavishnu Kshethram, Keezhattur
3. Thalakkottukara Siva Kshethram , Kundamkulam

4. Anjoor Ayyappankavu Kshethram, Mundur

5. Manganchira Vishnu Kshethram, Peruvallur

6. Nenmini Balarama Kshethram, Nenmini

7. Narayanamkulangara Bhagavathi Kshethram, Guruvayur

8. Thamarayur Ayyappa Vishnu Kshethram, Thamarayur

9. Punnathur Kotta Vishnu Siva Kshethram, Anakotta

10. Kaveedu Bhagavathi Kshethram, Kaveedu

11. Sathram Ayyappankavu, Guruvayur

There is no difficulty in understanding the objectives specified in Section 27(b).

72. Serious disputes are raised relating to the interpretation of Clauses (c), (d) and (e) to Section 27. After finishing the discussion on the less-controversial parts of the Section, we shall come back to the above Clauses. Section 27(ee) clearly says that the Committee, subject to the restrictions provided in Section 21, could incur expenditure out of the funds of Devaswom for the construction of buildings connected with the affairs of Devaswom. There is no obscurity in the wording in this Clause. Section 27(f) speaks about incurring expenditure for the establishment and maintenance of any educational institution which provides for encouragement of education in Sanskrit or Malayalam or the maintenance of any such educational institution owned and managed by the Devaswom or in which the Devaswom has an interest. Plain wording employed in this

Clause need no further clarification. Clause (g) to Section 27 empowers G.D.M.C. to make any contribution to religious institutions. But this is not an unbridled or unrestricted power. Through the 2nd proviso to Section 27, the powers conferred on G.D.M.C. under Clauses (f) and (g) have been restricted. 2nd proviso specifically says that no expenditure shall be incurred for the establishment and maintenance of any educational institution mentioned in Clause (f) and no contribution to any religious institution shall be made unless the same are sanctioned by the custom or practice associated with the temple. It is, therefore, clear that Clauses (f) and (g) are regulated by the custom or practice associated with the temple.

73. Section 27(c) is relating to G.D.M.C.'s authority to incur expenditure from out of Devaswom funds for providing medical relief, water supply and other sanitary arrangements for the worshippers and pilgrims and also for the construction of buildings for their (obviously, for the worshippers and pilgrims) accommodation.

74. Sri.T.K.Vipindas, learned standing counsel for Devaswom, argued on behalf of respondents 4 and 5 that during the wide-spread deluge in the State, lot of people, including the worshippers of Lord Guruvayurappan, have suffered loss of life and damage to property. Many of them might have required treatment for various ailments caused by the flood water. Under Section 27(c), the Committee is authorised to expend Devaswom funds for incurring medical relief to worshippers. Similarly,

water supply was disrupted at many places due to the natural calamity and people found it extremely difficult to get drinking water due to contamination of water sources. There also Devaswom funds can be spent for providing adequate water supply. Sanitary arrangements were also required to be done in connection with the unprecedented floods in the State. According to him, normal life of the worshippers and pilgrims might have been badly affected for days together during that time. Therefore, the impugned decision was taken in good faith and for providing relief to the worshippers and pilgrims.

75. Sri.P.B.Krishnan appearing for the Chairman, G.D.M.C. also supported the above contentions. Sri.Sohan, learned State Attorney too agreed to the above submissions. Whereas, the learned counsel appearing for the petitioners, in unison, contended that the above arguments are fallacious and unsustainable in law. According to them, the Devaswom funds cannot be utilised for providing medical relief, water supply and other sanitary arrangements through out the State and that is not the intention of the provision. Section 27(c) is intended only to provide medical relief, water supply and other sanitary arrangements for the worshippers and pilgrims coming to Guruvayur Temple as devotees. According to them, last limb in Clause (c) to Section 27 will clarify this position because it can be seen that the Committee is authorised to expend amounts from the Devaswom funds for the construction of buildings for accommodating the worshippers and

pilgrims. It is argued that Clause (c) should be read as a whole and it cannot be dissected against the intendment of the provision. Petitioners contended that none of these important aspects was considered at the time of taking the impugned decisions. Absence of application of mind to these aspects will be evident from the proceedings.

76. We have already mentioned about the meaning of the words "worshipper" and "pilgrim" in the earlier paragraphs. If we understand the above terms clearly, there will be no difficulty in understanding the plurals of these terms. It is the basic principle relating to interpretation of statutes that an interpretation which truncates any provision resulting in draining out the soul and spirit underlying it cannot be permitted. We find no justifiable legal reason to interpret Section 27(c) as a provision empowering G.D.M.C. to incur expenditure out of the Devaswom funds to provide medical relief, water supply and other sanitary arrangements for the worshippers and pilgrims on the supposition that they are scattered across the entire State. In our view, such an interpretation will do violence to the provision. This will be all the more clear when we take note of the first part in the Clause, dealing with medical relief, water supply and sanitary arrangements, connected by a conjunction "and" with the second part enabling G.D.M.C. to undertake construction of buildings for the accommodation of worshippers and pilgrims. G.D.M.C.'s authority to expend money for medical relief, water supply and other sanitary arrangements cannot be

disjunctively read and understood *de hors* the Committee's power to expend money for the construction of buildings for the accommodation of worshippers and pilgrims. Obviously, these are activities to be done in the precincts of the temple.

77. A Constitution Bench in **R.S.Nayak v. A.R.Antulay ((1984) 2 SCC 183)** has held thus:

> *"Depending upon the context, 'or' may be read as 'and' but the court would not do it unless it is so obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'."*

In **Green v. Premier Glynrhonwy Slate Company Limited (1928 (1) KB 561)**, Scrutton L.J. stated that:

> *"you do sometimes read "or" as "and" in a statute. But you do not do it unless you are obliged because "or" does not generally mean "and" and "and" does not generally mean "or"".*

(Also see **Nasiruddin v. State Transport Appellate Tribunal (AIR 1976 SC 331)**). All these principles have been discussed in **Sadasivan**'s case (supra).

78. Whole of the Section 27(c), taken together, will form a comprehensive scheme in itself and it empowers G.D.M.C. to provide facilities to the worshippers and pilgrims visiting the Temple for darsan or

other religious purposes. We hardly find any legal reason to hold that the authority conferred on G.D.M.C. to provide medical relief, water supply and sanitary arrangements under Section 27(c) could be exercised in such a macro-level to cover the entire State or even beyond the State boundary. As pointed out earlier, pilgrims throng Guruvayur Temple from various parts of the country. Likewise, Lord Guruvayurappan is worshipped by hundreds of thousands outside the State too. Is it intended or possible to provide help to all such worshippers and pilgrims in case of any natural calamity affecting them happens elsewhere in the country? In our view, the answer is an emphatic negative. If the argument raised by the learned counsel for the respondents that the Devaswom funds can be utilized for providing medical relief, water supply and sanitary arrangements to the worshippers and pilgrims anywhere in the State is accepted, it will lead to absurd results. There will be no legal logic for denying medical aid, water supply and sanitary arrangements to the worshippers and pilgrims staying outside the territorial limits of the State, if they also face such an alarming situation. Moreover, it is an admitted case that the Devaswom provides medical relief by running a hospital at Guruvayur. Further, they provide water supply, sanitary arrangements and accommodation facility to the worshippers and pilgrims. We do not intend to limit G.D.M.C.'s authority, rather obligation, to provide medical relief, water supply and sanitary arrangements in the close proximity of the Temple premises alone. However, it shall be done at any

place within a reasonable distance with a view to benefit the worshippers and pilgrims. By any stretch of the imagination we find no legal reason to read and understand the expressions medical relief, water supply and sanitary arrangements to the worshippers and pilgrims occurring in Section 27(c) in an expansive sense to cover the entire State. Moreover, nowhere in the impugned decisions or proceedings there is a mention about G.D.M.C. or Commissioner applying their mind regarding the predicament of the worshippers or pilgrims at the time of taking the decision to give away amounts from the Devaswom funds.

79. Sri.T.K.Vipindas and Sri.P.B.Krishnan contended that unlike in Clause (e), no religious tag is attached to the words "worshippers" and "pilgrims" used in Clause (c) to Section 27. To buttress this argument, they contended that in the schools and colleges run by G.D.M.C. there are non-Hindu students. Admission to the educational institutions are made on the basis of merit and rules relating to reservation. It is also pointed out that there is no bar for a non-Hindu to make an offering in the Guruvayur Temple. Hundies (offering boxes) are kept at different places where non-Hindus also make offerings. It is the contention of the Chairman, G.D.M.C. that non-Hindus used to perform *Thulabharam* in the East Nada outside the Temple. Although non-Hindus are not allowed entry into the Temple, Sri.T.K.Vipindas contended, they make offerings to the Temple as worshippers of Lord Guruvayurappan. It is therefore argued that the duties

cast under Section 27 can partake a secular character and therefore other communities cannot be totally excluded.

80. Opposing the said argument, learned counsel for the petitioners contended that although the act of administering a religious institution is a secular act, the objectives for which the Devaswom funds could be expended should be understood from the express provisions contained in the scheme or statute empowering the *Uralan* or Shebait (here the Committee) to manage the affairs of the Temple. It is also argued that G.D.M.C. should function as trustees in the matter of administration of the Devaswom and they are in a fiduciary relationship to the beneficiaries of the Temple. In short, they cannot deal with the Devaswom funds according to their whims and fancies in the guise of discharging a secular function. The word "secularism" literally means the principle of separation of the State from religious institutions. True, in the context of administration of Guruvayur Devaswom, a religious trust, literal meaning as above cannot be applied in its fullest extent because the secular functions of G.D.M.C. will have to be discharged keeping in view the intentions and objects of the trust.

81. No doubt, there are non-Hindus among the worshippers of Lord Guruvayurappan. Since the entry of non-Hindus to the Temple is restricted, they may not able to offer prayers inside the Temple. Arguments raised by the learned counsel for the respondents in this regard cannot be

taken as a reason to artificially expand the plain words used in Section 27(c). On a close look at Section 27, it will be evident that each Clause therein deals with a separate power or duty conferred on G.D.M.C. Since each Clause deals with a distinct aspect, we shall not attempt to interpret one Clause with reference to the other. In fact, Section 27(c) spells out a duty on G.D.M.C. to provide medical relief, water supply and sanitary arrangements for the worshippers and pilgrims. Obviously, it is for their benefit when they visit the Temple for worship. Of course, money can be expended from out of Devaswom funds for the construction of buildings for accommodating worshippers and pilgrims. Theory that Devaswom funds can be utilized for the benefit of worshippers located at any place in the State is a far-fetched imagination, not supported by the contents of Section 27(c).

82. Clause (d) to Section 27 allows G.D.M.C. to incur expenditure for promoting culture and propagation of the tenets and philosophy associated with the Temple. Exts.P1, P2, P6 and P7 (the impugned decisions taken by G.D.M.C. and the Commissioner), for any reason, do not relate to propagation of philosophy associated with the Temple or promotion of culture. Sri.T.K.Vipindas relying on **Srimad Bhagavatham** and **Bhagavath Geetha** contended that *dhanam* (charity) to the needy is one of the sacred acts for the Vaishnavites. According to him, "*Loka Samastha Sukhino Bhavanthu*" (let all people in the world be happy) is the

essence of the Hindu theology. According to Maha Upanishad, it is contended, *Vasudhaivakutumbhakam*, meaning the whole world as one family, is the sacred vision. Sri.P.B.Krishnan argued that the essence of **Bhagavath Geetha** is that any person, who worships any deity, worships Him. We have no doubt that the scriptures, which the Hindus consider as the most sacred ones, speak about the fundamental concept of Universal Oneness. Basic tenet of Hinduism is *Advaitham*, ie., monotheism. True, theologically there cannot be any sort of a division among the humans. Supreme Being, according to the ancient Hindu scriptures, is the creator, sustainer and terminator of all the living and nonliving things in the universe. Needless to point out, we shall not reduce or diminish the concept of Divinity in Hinduism to a micro or nano level so as to promote a thinking that there is any caste or religious divide for the Supreme Being. But then, we cannot decide the legal questions relating to the rights and obligations of G.D.M.C. arising under Section 27 with reference to the scriptures. It is vehementally argued by Sri.T.K.Vipindas, Sri.P.B.Krishnan and Sri.K.V.Sohan, on behalf of the respondents, that the administration of a religious institution is a secular act. So, the respondents cannot be allowed to approbate and reprobate by saying in one breath that the functions under Section 27, relating to the Temple administration, are secular in nature and it should be decided in accordance with the law and at the same time urging to interpret the Section on the basis of verses in

the scriptures. We have no doubt, the matters contained in Section 27(d) are not merely the rights of G.D.M.C., but its bounden duties too. Propagation of the tenets and philosophy associated with the Temple could be done in many ways. G.D.M.C. can, under this Clause, incur expenses for publishing religious books and promoting Temple art forms like *Kathakali, Krishnanattom*, Music concerts (*Sangeethotsavam*), etc. Therefore, the theological principles described in Section 27(d) should be put to practise by G.D.M.C. as per the statutory prescriptions. We therefore find that Clause (d) has no application to this case.

83. Clause (e) to Section 27 is relating to establishment and maintenance of or the making of any grant or contribution to any poor home or other similar institution. This Clause is qualified by stating that the poor home or other similar institution should have been maintained for the benefit mainly of persons belonging to Hindu community. This Clause is further qualified by the 1st proviso by stating that nothing contained in the Clause shall prevent continuance of any grant or contribution to any poor home or other similar institution which is maintained by or for the benefit of persons other than those belonging to Hindu community, if such grant or contribution was being made before the commencement of the Act of 1978 as the customary practice associated with the Temple. It is therefore clear from the proviso that grant to such poor home and other similar institution can be continued after the commencement of the Act of 1978 only if such

grant or contribution was being made to such poor home prior to the commencement of the Act. In addition to that, it should have been a customary practice associated with the Temple. Here, in Clause (e), we find a mentioning about the beneficiaries as mainly persons belonging to Hindu community and that qualification is conspicuously absent in Clause (c). As stated above, worshippers and pilgrims need not be Hindus. Certainly, they are entitled to get medical relief, water supply and other sanitary arrangements when they visit Guruvayur for worship or when they undertake a pilgrimage. Further, construction of buildings for the accommodation of worshippers and pilgrims is also a duty cast on G.D.M.C. for which they are authorised to expend Devaswom funds. When we read the entire Act with a special reference to Section 27, we find the Clauses in Section 27 are the only provisions specifically authorising the Committee to incur expenses from out of Guruvayur Devaswom funds. We have no doubt, Exts.P1, P2, P6 and P7 cannot be justified by relying on Clause (c) to Section 27 for the aforementioned reasons. Similarly, Clauses (d) and (e) also do not indicate any reason to justify the respondents' arguments.

(d) Other ancillary legal questions raised:

84. Learned counsel for the petitioners, relying on Section 10 of the Act of 1978, contended that the provision casts certain duties on the Committee and does not speak about any of its rights. Our attention has

been drawn to Section 10(b) which says that G.D.M.C., subject to the provisions of the Act and Rules, is duty bound to provide facilities for the proper performance of worship by the worshippers. Clause (c) to the Section enjoins G.D.M.C. to ensure safe custody of the funds, valuable securities and jewelleries and preservation and management of the properties vested in the Temple. According to the learned counsel, two things are clear from the above provision. First, it is the responsibility of G.D.M.C. to handle the funds and valuable securities of the Devaswom with care and caution. Second, it makes clear that the funds, valuable securities, jewelleries, etc. vest in the Temple. It has been highlighted, referring to Section 10(e), that G.D.M.C. is duty bound to ensure that the funds of the endowments are to be spent according to the wishes, so far as may be known, of the donors. This point is raised to counter the argument by the learned standing counsel for the Devaswom that amount contributed to C.M.D.R.F. by the Devaswom is only a small portion of the interest accrued to the fixed deposits. Pertinent question is whether G.D.M.C. and the Commissioner have any right to deal with any amount, irrespective of the quantum, as was done from out of the Devaswom funds? Rules of interpretation do not permit us to eschew completely the aspects mentioned in Section 10 while we interpret the spirit of the Clauses embodied in Section 27. True, Section 10 imposes duties on G.D.M.C. subject to other provisions of the Act and Rules made thereunder. Rule

18(3) to Guruvayur Devaswom Rules, 1980 specifically says that any money received as endowment shall be deposited separately and the expenditure shall be limited to the extent to which the interest is available. This is an indication regarding the restriction in spending money out of the interest earned by the endowments created by the believers. Cumulative effect of these provisions will be that the persons in management of the Devaswom have no unrestricted right to handle the funds. The respondents have no definite case as to whether the contribution made to C.M.D.R.F. was out of the interest accrued from any deposit or deposits relating to particular endowment/endowments or whether the payment was made out of the endowment/endowments in which the donor/donors have expressed such an intention. That is a clear obscurity in the case of the respondents.

85. Learned counsel for the petitioners vehementally argued that G.D.M.C. and the Commissioner, placed in the position of trustees, cannot incur expenditure disregarding the mandate of Section 27. In order to get over this argument, learned counsel appearing for the respondents contended that the Guruvayur Devaswom has no machinery to find out where exactly the worshippers and pilgrims reside and who among them suffered difficulties in the natural calamity. In other words, it is completely impracticable for the Devaswom to provide medical relief, water supply and sanitary arrangements for the worshippers and pilgrims as its administrative machinery has no means to ascertain their location.

Sri.K.V.Sohan, Sri.P.B.Krishnan and Sri.T.K.Vipindas justified the action of G.D.M.C. and the Commissioner on the ground that since they are bound to comply with the obligations under Section 27, they have no other alternative, but to contribute amounts to the C.M.D.R.F. so that the worshippers and pilgrims scattered across the State could be benefited. It is their argument that the State Government have an effective machinery for providing the requisite help to the needy. Merely because the amounts contributed to C.M.D.R.F. might have been used for persons who do not fall within the classification "worshippers and pilgrims", it cannot be said that the decision to contribute is bad in law.

86. Controverting this argument, learned counsel for the petitioners contended that there is no record made available to show whether the amount contributed by the Devaswom had gone to any of the worshippers or pilgrims. Likewise, there is no record to show how many worshippers and pilgrims were benefited by the Devaswom's contribution to the C.M.D.R.F. According to them, the funds reaching in C.M.D.R.F. will be used for many other purposes. Rather, it could have been used for purposes totally unconnected with the objectives specified in Section 27. Besides, it is vehementaly argued by the learned counsel for the petitioners that neither G.D.M.C. nor the Administrator or the Commissioner did ever explore the feasibility of providing medical relief, water supply or sanitary arrangements to worshippers and pilgrims in and around Guruvayur, which

area, like other parts of the State, was also badly affected due to the deluge. The respondents have no case that they tried to work out their statutory obligations under Section 27(c) with the help of any Governmental agencies or credible non-governmental agencies and failed in their earnest efforts. It is, therefore, argued that G.D.M.C., having the obligations of a trustee, has abdicated their fundamental duties in derogation of the legal principles. True, the impugned orders do not show any sufficient reason to meet this argument.

87. As directed by this Court, learned State Attorney produced a compilation of the Government Orders relating to the payments made during various periods out of C.M.D.R.F., constituted under the Rules for the Administration of Distress Relief Fund. Circular No.8251/J4/07/Rev. issued by Revenue (J) Department dated 19.02.2007 is an appeal to the Government employees, quasi-government employees, employees in the banking and insurance sectors, expatriates, service organizations, traders, etc, to generously contribute amounts to C.M.D.R.F. as it is constituted to render financial help to persons below poverty line reeling under serious ailments, dependents of accident victims, labourers suffering financial difficulties due to loss of employment, etc. So, it is evident that the amounts in the C.M.D.R.F. are spent on various social causes. It is further discernible from the compilation of the Government Orders that many amounts have been disbursed to individuals under various heads, viz.,

treatment expenses, compensation for loss of life and damage to property on account of fire accident, compensation for loss of life and damage to boat and other fishing gadgets, compensation for damage to residential buildings on account of flood, compensation for death and injuries in fire cracker accident, compensation for damage to landed property caused by stormy seas and consequential soil erosion, compensation for death, bodily injury and damage to house on account of lightening and compensation paid to accident victims, both road accident and boat accident. The table below will show the details of some relevant Government Orders:

Treatment expenses

Sl.No.	Government Orders/Circulars	Date
1	Circular No.29568/D.R.F.-A1/11/Rev.	30.06.2011
2	G.O.(MS)No.382/11/Rev	20.10.2011
3	G.O.(MS)No.144/12/Rev	11.04.2012
4	Circular No.41482/D.R.F.-A2/12/Rev.	07.08.2012

Compensation for death/injury and damage to houses on account of fire cracker accident

Sl.No.	Government Orders/Circulars	Date
1	G.O.(MS)No.303/2016/DMD	16.04.2016
2	G.O.(MS)No.304/16/Rev.	20.04.2016
3	G.O.(RT)No.2513/2016/DMD	06.06.2016

Compensation for loss of boat and other fishing gadgets

Sl.No.	Government Orders/Circulars	Date
1	G.O.(MS)No.48/2020/Rev.	08.02.2020

Compensation for damage to residential buildings due to natural calamity

Sl.No.	Government Orders/Circulars	Date
1	Circular No.42913/D.R.F.-A1/09/Rev.	04.03.2010

Compensation for death, serious injuries and damage to house caused by stormy sea

Sl.No.	Government Orders/Circulars/Letters	Date
1	G.O.(MS) No.No.295/11/Rev.	04.08.2011

Compensation for death caused by lightening

Sl.No.	Government Orders/Circulars/Letters	Date
1	G.O.(RT)No.2766/11/Rev.	01.07.2011

Compensation for bodily injuries and damage to dwelling houses on account of lightening

Sl.No.	Government Orders/Circulars	Date
1	G.O.(MS) No.223/12/Rev.	02.06.2012

Compensation payable to the family members of the persons died in accidents including road and boat accidents.

Sl.No.	Government Orders/Circulars/Letters	Date
1	Circular No.2770/J4/07/Rev.	16.01.2007
2	Circular No.657/J4/07/Rev.	05.02.2007
3	Circular No.70945/D.R.F.-A3/07/Rev.	13.02.2008
4	Circular No.17777/D.R.F.-A1/08/Rev.	28.07.2008
5	G.O.(MS)No.393/08/Rev.	19.11.2008
6	G.O.(MS)No.345/10/Rev.	20.08.2010

Compensation payable to the family members of persons died in epidemics (chicken guinea, leptospirosis, dengue)

Sl.No.	Government Orders/Circulars	Date
1	G.O.(MS) No.262/07/Rev.	13.07.2007
2	G.O.(MS) No.285/07/Rev.	02.08.2007
3	Circular No.73987/D.R.F.-A2/07/Rev.	17.11.2007

Compensation for damage to dwelling houses on account of fire accidents

Sl.No.	Government Orders/Circulars	Date
1	G.O.(MS)No.34/12/Rev.	28.01.2012

Compensation for damages caused to 80 houses at Puzhathi in Kannur District due to explosions

Sl.No.	Government Orders/Circulars	Date
1	G.O.(MS)No.561/2016/Rev.	05.11.2016

88. Learned counsel for the petitioners vehemently contended that money parked in C.M.D.R.F. could be seen to have been utilized for various purposes not connected with providing medical relief, water supply and sanitary arrangements to worshippers and pilgrims. Amounts from C.M.D.R.F. is disbursed in the exercise of sovereign power and it is a secular act without regard to the fact whether the beneficiaries are worshippers or pilgrims of Lord Guruvayurappan. It is argued therefore that the contribution made by the Devaswom could have been used for

purposes other than those specified in Clause (c) to Section 27. There is no machinery for the Government to monitor the utilization of money contributed by the Devaswom. In answer to this contention, learned counsel appearing for the respondents contended that the Government must have spent more funds for medical relief, water supply and sanitary arrangements than the amount contributed by the Devaswom. Further, Lord Guruvayurappan's worshippers too might have derived the benefit. Therefore, it cannot be said that there was misutilization of the funds by the Devaswom. Even according to the respondents, they have no empirical data as to how many beneficiaries could be regarded as worshippers or pilgrims. This argument by the respondents is based on a mere assumption that the payments from out of C.M.D.R.F. could have reached the worshippers also. There is absolutely no definiteness in the respondents' case, except basing it on conjunctures and surmises.

89. A strenuous attempt was made by the learned standing counsel for G.D.M.C. and the learned counsel for its Chairman to import the doctrine "cy pres" to justify the impugned decisions. According to the **Black's Law Dictionary** the phrase "cy pres" means "as near as". It may also mean "as nearly as possible" depending on the context. In **V.K.Varadachari's "Hindu Religious and Charitable Endowments"** (4th Edition), we find the following principles regarding the application of the doctrine in our country (see page 616):

"Where a general charitable intention is established the cy-pres doctrine has been applied in the following cases :

(i) Where the particular object is impossible or illegal.

(ii) Where the particular object has existed but ceases to exist before the gift is vested.

(iii) Where the particular object has never existed or cannot be identified.

(iv) Where an established charity comes to an end because the object for which it was established has ceased to exist or for any other reason.

(v) Where there is surplus.

(vi) Where the machinery for the application of the gift fails."

Importantly, contesting respondents have no case that they ever explored, in any manner, the possibility or practicability of providing medical relief, water supply and sanitary arrangements by themselves before taking the decisions under challenge. It is not at all their case that despite the best efforts they could not discharge the obligations under Section 27(c).

90. Doctrine of "cy pres" is applied to both charitable and religious trusts in India, unlike its English counter part which governs charitable trusts only.

91. Application of the above doctrine has been lucidly discussed by a Constitution Bench, speaking through His Lordship **Justice B.K.Mukherjea** in **Ratilal Panachand Gandhi v. The State of Bombay and others (AIR 1954 SC 388)** in the following words:

> *"..... When the particular purpose for which a charitable trust is created fails or by reason of certain circumstances the trust cannot be carried into effect either in whole or in part, or where there is a surplus left after exhausting the purposes specified by the settlor, the court would not, when there is a general charitable intention expressed by the settlor, allow the trust to fail but would execute it 'cy pres', that is to say, in some way as nearly as possible to that which the author of the trust intended. In such cases, it cannot be disputed that the court can frame a scheme and give suitable directions regarding the objects upon which the trust money can be spent.*
>
> *It is well established, however, that where the donors' intention can be given effect to, the court has no authority to sanction any deviation from the intentions expressed by the settlor on the grounds of expediency and the court cannot exercise the power of applying the trust property or its income to other purposes simply because it considers them*

to be more expedient or more beneficial than what the settlor had directed. - 'Vide Halsbury, 2nd Edn., Vol.IV, p.228.'

(underline supplied by us)

In the above case, certain provisions of the Bombay Public Trusts Act,1950 were challenged before the apex Court. Referring to Sections 55 and 56 of the said Act, the Supreme Court found that the provisions extended the doctrine of "cy pres" much beyond its recognized limits and further introduced certain principles which were countering the well established rules of law regarding the administration of charitable trust. In the course of discussion, it has been observed in paragraph 19 thus:

"Whether a provision like this is reasonable or not is not pertinent to our enquiry and we may assume that the legislature, which is competent to legislate on the subject of charitable and religious trust, is at liberty to make any provision which may not be in consonance with the existing law; but the question before us is, whether such provision invades any fundamental right guaranteed by our Constitution, and we have no hesitation in holding that it does so in the case of religious trusts. A religious sect or denomination has the undoubted right guaranteed by

the Constitution to manage its own affairs in matters of religion and this includes the right to spend the trust property or its income for the religious purposes and objects indicated by the founder of the trust or established by usage obtaining in a particular institution. To divert the trust property or funds for purposes which the Charity Commissioner or the court considers expedient or proper, although the original objects of the founder can still be carried out, is to our minds an unwarrantable encroachment on the freedom of religious institutions in regard to the management of their religious affairs."

(underline supplied by us)

Nobody can dispute the proposition that the basic document from which the purposes for utilizing the Devaswom properties, including money, can be understood is the provisions of the Act of 1978. Of course, a special reference can be made to Section 27. Therefore, the argument based on the doctrine of "cy pres" for justifying the implementation of the controversial decision is unsustainable in law.

92. From the discussion in the foregone paragraphs, it will be certain that the role assigned to G.D.M.C., constituted under Section 3 in the Act of 1978, is that of a trustee in management of the properties vested

in the deity. G.D.M.C., which functions as a trustee, is bound to administer, control and manage the properties belonging to Guruvayur Devaswom in accordance with the public interest and in the interest of the worshippers. Public interest arises in purely secular functions and interest of the worshippers arises in both secular and religious functions. Unquestionable legal principles relating to the administration of Hindu Religious Endowments would show that the person or persons in management of Debutter property is or are bound to administer the same by himself or themselves to the utmost benefit of the beneficiaries. They are legally bound to follow all the guidelines in the founding document in letter and spirit. In this case, G.D.M.C. is bound by the provisions of the Act of 1978 in the matter of administration, control and management of the properties belonging to Guruvayur Devaswom. We have no doubt that G.D.M.C., the Administrator and the Commissioner are functionaries under the Act of 1978. There is absolutely no reason inferable from the statute that they are exercising any sovereign power. Albeit the Commissioner is a Secretary to the State Government, his powers and functions are regulated by the relevant statute. In other words, powers and duties of the functionaries will have to be decided with reference to the statute only. From Section 17 of the Act of 1978, it will be evident that the Administrator shall function as the Secretary to G.D.M.C. and he shall be the Chief Executive Officer functioning subject to the control of the Committee. He is bound to carry

out the decisions taken by G.D.M.C. in accordance with the provisions of the Act. Likewise, provisions under the Act, with a special reference to Section 20, would clearly show that the Commissioner is not expected to act mechanically when G.D.M.C. submits a proposal for the approval of fixing the scale of expenditure. Section 20(3) gives a discretion to the Commissioner to scrutinise the scale of expenditure before approving the same. It is also provided in the Sub-section that he is entitled to scrutinise whether any scale of expenditure proposed by G.D.M.C. is at variance with the established usage of the Devaswom. Therefore, it is evident that the Commissioner is expected to apply his discretion judiciously and in conformity with the settled legal principles. Hence, we find that none of the arguments raised by the learned counsel for the contesting respondents to support the impugned decisions can be legally sustained. For the aforementioned reasons, we find respectfully that the interpretation placed by the Division Bench in W.P.(C) No.19035 of 2019 on Section 27 of the Act of 1978 is legally incorrect. In our view, the Division Bench in the above case did not interpret the scope of the Clauses in Section 27 in their true legal sense. Therefore, we hereby overrule the declaration of law in W.P. (C) No.19035 of 2019.

93. Another ground of attack against the judgment in W.P.(C) No.19035 of 2019 is that it is *per incuriam*. Legal proposition that expositions of law must be followed and applied even by co-ordinate or co-

equal Benches is indisputable. If any binding precedent rendered by a co-ordinate Bench is not followed, it will adversely affect the continuity and certainty of law. On this ground, it is also argued that the judgment in W.P. (C) No.19035 of 2019 is not a good law as it was rendered in ignorance of the binding precedent by a co-ordinate Bench in **C.K.Rajan**'s case (supra). To buttress this submission, reliance has been placed on the decision in **State of U.P. v. Ajay Kumar Sharma ((2016) 15 SCC 289)** wherein it is observed thus:

> *"Time and again this Court has emphatically restated the essentials and principles of "precedent" and of stare decisis which are a cardinal feature of the hierarchical character of all common law judicial systems. The doctrine of precedent mandates that an exposition of law must be followed and applied even by coordinate or co-equal Benches and certainly by all smaller Benches and subordinate courts. That is to say that a smaller and a later Bench has no freedom other than to apply the law laid down by the earlier and larger Bench; that is the law which is said to hold the field. Apart from Article 141, it is a policy of the courts to stand by precedent and not to disturb a settled point. The purpose of precedents is to bestow predictability*

on judicial decisions and it is beyond cavil that certainty in law is an essential ingredient of rule of law. A departure may only be made when a coordinate or co-equal Bench finds the previous decision to be of doubtful logic or efficacy and consequently, its judicial conscience is so perturbed and aroused that it finds it impossible to follow the existing ratio. The Bench must then comply with the discipline of requesting the Hon'ble Chief Justice to constitute a larger Bench."

94. Rule of *per incuriam* was evolved in order to guard against the possibility of inconsistent decisions on the same points of law by different courts. A Constitution Bench of the Supreme Court in **A.R.Antulay v. R.S.Nayak ((1988) 2 SCC 602)** has held thus:

"..... "Per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong. ....."

It has also been held that if a decision has been given *per incuriam*, the court can ignore it.

95. On a reading of the judgments in **C.K.Rajan**'s case and in W.P.(C) No.19035 of 2019, it will be clear that the pronouncement in **C.K.Rajan**'s case touching on the interpretation of Section 27 of the Act of 1978 was not considered in the later decision. Therefore, we have no hesitation to hold that the later decision was rendered *per incuriam*.

Epilogue

96. We have elaborately deliberated, in the foregone paragraphs, on the issues arising from the order of reference. In order to effectively adjudicate the questions raised, we have considered all the ancillary issues arising therefrom too. Our conclusions are succinctly put hereunder:

(I) All the properties, including movable and immovable properties and money, dedicated to or endowed in the name of Lord Guruvayurappan or any property acquired in any manner by Guruvayur Devaswom shall vest in the idol of Lord Guruvayurappan, consecrated in Sree Krishna Temple, Guruvayur.

(II) G.D.M.C. constituted under Section 3 of the Act of 1978 is legally bound to administer, control and manage all the properties belonging to Guruvayur Devaswom in accordance with the provisions of the said Act. The Administrator and the Commissioner shall also function within the frame work of the statute.

(III) The legal status of G.D.M.C. constituted under Section 3 of the Act of 1978 is that of a trustee in management of the Devaswom

properties and the Committee is duty bound to scrupulously follow the stipulations contained in the Act of 1978. Unless a contrary intention, either expressly or by necessary implication, arises from the provisions of the statute in any particular subject or context, G.D.M.C. is legally bound to administer and manage the Devaswom and its properties in accordance with the settled legal principles relating to the administration of Hindu Religious Trusts.

(IV) G.D.M.C., being the trustee in management of Devaswom properties, is legally bound to perform its duties with utmost care and caution. In view of the settled legal principles that the trustees cannot delegate their powers and duties to any other person, we hold that G.D.M.C. cannot delegate its powers, functions and duties under the Act of 1978 to the State Government or any other entity.

(V) None of the provisions in the Act of 1978, including Section 27, authorises G.D.M.C. or the Administrator or the Commissioner to contribute or part with or give away in any manner any amount from the funds belonging to Guruvayur Devaswom, either to C.M.D.R.F. or to any other Governmental agency, for any purpose specified under the Act of 1978, including Section 27 of the Act, since it is the non-negotiable obligation of G.D.M.C., as a trustee, to perform the duties and obligations enumerated therein all by itself or, in an exigency, directly under its supervision and control through other means.

(VI) Section 27(c) of the Act of 1978 relating to medical relief, water supply and other sanitary arrangements for the worshippers and pilgrims cannot be read and understood detached from that part in the clause relating to the construction of buildings for the accommodation of worshippers and pilgrims. Scope of Section 27(c) cannot be widened so as to provide medical relief, water supply and other sanitary arrangements as contemplated under the impugned decisions/orders.

(VII) View adopted by the Division Bench in W.P.(C) No.19035 of 2019 on Section 27 of the Act of 1978 is legally unsound and unsustainable. We overrule the decision.

(VIII) The Registry shall post all the Writ Petitions for hearing and disposal in accordance with the roster.

A.HARIPRASAD,
JUDGE.

ANU SIVARAMAN ,
JUDGE.

M.R.ANITHA,
JUDGE

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