

(2023) 01 KL CK 0286

In the High Court Of Kerala

Case No : Writ Petition (C) No. 25153 Of 2021

Rajaneesh Kumar R

APPELLANT

Vs

Travancore Devaswom Board, Devaswom Headquarters,
Nanthancode, Thiruvananthapuram 695003, Represented By
Its Secretary

RESPONDENT

Date of Decision : 05-01-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 451

Code of Civil Procedure, 1908 — Section 92

Travancore Cochin Hindu Religious Institutions Act, 1950 — Section 37, 38, 39, 58

Citation : (2023) 01 KL CK 0286

Hon'ble Judges : Anil K.Narendran, J;P.G. Ajithkumar, J

Bench : Division Bench

Advocate : S.Krishnamoorthy, Sneha Rose, P.S.Aruna, G.Santhosh Kumar, M.Gopikrishnan Nambiar, K.John Mathai, Joson Manavalan, Kuryan Thomas, C. Abraham, Raja Kannan, S.Subhash Chand, P.B.Krishnan, P.B.Subramanyan, Sabu George, Manu Vyasana Peter

Final Decision : Allowed

Judgement

P.G.Ajithkumar, J.

1. The petitioners claiming to be devotees of Sree Devi Bhuvaneswari of Manakkattu Devi Temple, Pallipad filed this Writ Petition under Article 226 of the Constitution of India seeking a writ of mandamus commanding the 1st respondent to assume the management of the said Temple under the provisions of Section 37 of the Travancore Cochin Hindu Religious Institutions Act, 1950 (for short "the Act"). A direction to conduct an enquiry as envisaged under Section 38 of the Act, in prelude to such assumption is also sought for.

2. The petitioners would contend that the Temple was included as Sl.No.381 in the list of grant-in-aid Temples administered by the then Rulers of Travancore and therefore it should have been included in the list of incorporated Devaswoms

contained in Annexure-I of the Act. Accidentally it was omitted. Now, the Temple is being administered by a Devaswom Bharana Samithy. There occurred repeated instances of mismanagement in the affairs of the Temple. Assets of the Temple, including Thiruvabharanam, were misappropriated by the persons in the helm of affairs of the Temple. A crime was also registered regarding the loss of Thiruvabharanam of the Deity. Respondents No.6 and 7, who were the then office bearers of the Bharana Samithy, are the accused. Ext.P5, a copy of the audit report dated 07.12.2016 also reveals the misappropriation. In such circumstances, there occurred demands for assumption of the Temple by the 1st respondent. The 3rd respondent-Deputy Devaswom Commissioner initiated an enquiry, but Ext.P3 report was to the effect that the authorities of the Temple administration did not provide the accounts and records for verification and therefore the enquiry could not be done. The 1st respondent did not therefore take any steps in the matter of mismanagement of the Temple affairs. Therefore, the petitioners were compelled to approach this Court by filing this Writ Petition.

3. The learned Standing Counsel for the Travancore Devaswom Board took notice for respondent Nos.1 to 3. The Secretary of the Travancore Devaswom Board filed a counter affidavit for and on behalf of respondents 1 to 3. Respondents 4 and 5 entered appearance through their learned counsel and filed a counter-affidavit. Respondents 6 and 7 did not choose to file any counter.

4. Respondents 8 and 9 got themselves impleaded for which they have filed I.A.No.3 of 2022. Similarly, respondents 10 and 11 got impleaded for which they have filed I.A.No.4 of 2020. These respondents also did not choose to file any counter affidavit.

5. On 16.11.2022, the learned Standing Counsel for the Travancore Devaswom Board made available for our perusal Volume I, Part II of Travancore Devaswom Board Manual printed and published in the year 1936. Appendix XIX to the Manual contains the list of grant-in-aid Devaswoms. Sl.No.381 in Appendix XIX is the 4th respondent-Manakkad Sree Devi Bhuvaneswari Temple.

6. Heard the learned counsel appearing for the petitioners, the learned Standing Counsel for the Travancore Devaswom Board and the respective learned counsel appearing for respondents 4 and 5, 8 and 9, and also respondents 10 and 11.

7. Reliefs claimed are in relation to the administration of the 4th respondent Temple. When the petitioners claim to be devotees, their locus to maintain the writ petition cannot be disputed. The petitioners have three-fold contentions; the first is that the 4th respondent-Temple was a grant-in-aid temple and hence it is an incorporated Devaswom, but due to some accidental slip, it is omitted from Appendix I to the Act; secondly, that the Bharana Samithi comprising representatives of four NSS Karayogams administers the Temple, which implies that it is a Hindu Religious Endowment as defined in Section 3(c) of the Act and thirdly, that overwhelming materials are there evidencing mismanagement of the Temple administration. The learned counsel for the petitioners would submit that

the 1st respondent is obliged, in view of those reasons, to invoke Section 37 of the Act and take over the Temple.

8. From the Travancore Devaswom Board Manual, printed and published in the year 1936, it is seen that the Temple was included in the list of grant-in-aid Devaswoms as Sl.No.381. However, the Temple does not find a place in Schedule-I to the Act which enlists the incorporated Devaswoms. Going by the definition in Section 2(c) of the Act, devaswoms mentioned in Schedule-I alone are "Incorporated Devaswoms". Inasmuch as this Temple has not been included in Schedule-I, the fact that it was a grant-in-aid Devaswom prior to the enactment of the Travancore-Cochin Hindu Religious Institutions Act, does not have relevance in this Writ Petition, especially when the reliefs claimed pertain to assumption of the Temple alone. As rightly pointed out by Sri.Subhash Chand, the learned counsel appearing for respondent Nos.7 and 8, the remedy of the petitioners in that regard is to take steps for amendment of the Schedule, as provided in Section 58 of the Act. In the absence of claiming such a relief this contention does not require deliberation.

9. It is the contention of the petitioners that the mismanagement was so rampant and its magnitude is exemplified from the fact that the Thiruvabharanam of the Deity kept in the locker of the Temple with the Kerala Bank even was misappropriated. Ext.P5 is a copy of the audit report of the Temple from 01.12.2013 to 31.10.2016. The learned counsel appearing for the petitioners would submit that from it several instances of misappropriation could be seen.

10. The further contention is that the immovable property belonging to the Temple was lost on account of the recalcitrant attitude of the Temple administration. 0.85 Ares of land belonging to the Deity is now not the assets of the Temple.

11. The essential allegations set forth by the petitioners are not controverted by the Devaswom Board. The Board has contended that following the allegations of misappropriation and also the requests from third parties for assumption of the Temple, the 3rd respondent-Deputy Commissioner was directed to conduct an enquiry. After the enquiry reports were submitted and on considering such reports the Board decided not to take over the Temple. The result of enquiry and the action taken by the Board are narrated in paragraph Nos.4 and 5 in the counter-affidavit, which are extracted below:

"4. It may be noted that the Devaswom Commissioner had issued orders directing the Land Special Officer to conduct a verification on the land properties of the temple and had issued another order directing the Finance and Accounts Officer to conduct audit of the accounts for a period of 5 years. The Land Special Officer after verification of records had submitted his report on 18.05.2019 before the Devaswom Commissioner. According to him, the temple is a very old temple which is in existence since the settlement period. As per Government

Order number, G.O.(Ms) No.376/66, the temple is having 2 Acres 20 cents of land in Sy.No.1519 of Pallippadu Village. The Assistant Audit Officer along with two Audit Officers had reached in the temple on 09.12.2019 to conduct the audit of account. However the Administrative Committee members had refused to hand over the account details to the Audit Officers stating that the accounts are prepared and regularly submitted before the General Body on every month and being a private temple, the accounts cannot be given to any other agency for conducting audit. In the said circumstance, the audit officers had left the temple without conducting the audit and had reported the above stated facts to the Devaswom Commissioner.

5. It is submitted that referring to the above report of the Assistant Audit Officer, the Finance and Accounts Officer had sent a report to the Devaswom Commissioner on 12.06.2020 affirming the report and recommending that the takeover of the Temple from the present administrative committee will lead to litigation and it would be a burden to the Board also. The Devaswom Commissioner considering the above reports and after getting opinion from the Assistant Law Officer had sent a report as ROC No.25157/2018/Grant dated 05.06.2020 to the Board recommending not to assume the management. The Board after considering the report of the Devaswom Commissioner issued order No.ROC 25157/18/6144/ 19/Land dated 10.08.2020 whereby rejecting the plea to assume the management of the temple. Thereafter on 01.02.2021, Ext.P6 petition was preferred before the Devaswom Commissioner requesting the very same earlier reliefs sought in the matter. The same was disposed by the Devaswom commissioner on 5. 04.2021 citing the earlier decision in this regard. The contention in the Writ Petition that the temple was administrated by the ruler of Travancore is not correct. The temples under the ruler of Travancore were transferred to the TDB as per schedule-I of TCHRI Act except the Padmanabha Swamy Temple. The temple in question was a grand-in-aid Devaswom and included in the list of grant-in-aid Devaswom. Grant-in-aid Devaswom are private Devaswom which were getting grant from the Travancore Government for its day to day affairs. They are not the temples owned or administered by the rulers of Travancore."

12. Respondent Nos.4 and 5 also do not deny the instances of misappropriation pointed out by the petitioners. Their contention is that such misappropriation has no connection with the institution, but it was committed by respondent Nos.6 and 7 in their individual capacity. Respondent Nos.6 and 7 being the President and Secretary of the Bharana Samithy, misused their official capacity and misappropriated the Thiruvabharanam and other ornaments. Immediately on knowing that fact, action was initiated and they were removed. An Adhoc Committee was constituted and the President of the Adhoc Committee complained before the police, upon which a crime was registered against respondent Nos.6 and 7. A copy of the F.I.R in crime No. 552 of 2021 of Harippad police station is Ext.R4(e). Thus, these respondents contended that there occurred no instance of mismanagement by the Bharana Samithy and therefore

the provisions of Section 37 of the Act cannot have any application.

13. Respondents No. 4 and 5 explained the nature of administration of the Temple in paragraph No.5 of their counter. Administration of the temple is jointly conducted by the four Karayogams in Pallipad village. The management and administration of day-to-day affairs of the temple are by an elected body of representatives from the four Karayogams, viz. Naduvattom (NSS Karayogam No. 98), Thekkekkara Kizhakk (NSS Karayogam No. 109), Thekkum Muri (NSS Karayogam No. 112) and Kottakkakam (NSS Karayogam No. 113). The administrative body is always democratically elected, and also to allow for a more transparent administration of the temple, an Agreement/Covenant of Administration ('bharanaudampadi') dated 13.02.1948 (Kumbham 1st 1123 ME) was executed and registered by the four Karayogams. Under the said Agreement/Covenant, an administrative body would be elected every three years and the body consists of 9 members. Ext.R4(a) is a copy of the said agreement/covenant dated 13.02.1948.

14. Respondent Nos.4 and 5 tried to explain away the allegations regarding misappropriation by stating as follows. Para 8 in the counter reads,-

"8. The Bharana Samithy is headed by the President. The day-to-day administrative affairs of the office and the temple are conducted by the Secretary. The President of the Bharana Samithy that was elected in January 2020, was the 6th Respondent and the Secretary was the 7th Respondent. It was most unfortunate that, as subsequently came to light, the 6th and 7th Respondent without the approval of the bharana samithy, removed from safe custody, thereby misappropriating, various gold and silver ornaments and assets and most significantly, the 'thiruvaabharanam,' of the 4th respondent deity. It is submitted that the actions were performed by the 6th and 7th respondents entirely in their private capacity and was absolutely not traceable to the management and administrative body, who did not know that such illegality was being perpetrated. It is submitted that all such precious items were kept in the temple locker in the name of the 5th respondent Devaswom Bharana Samithy, in Kerala Bank, Poyyakkara Branch. These ornaments were only used for adornment of the deity on special occasions and therefore were not for daily usage. It is submitted that only the 6th and 7th respondents, in their capacities as President and Secretary and custodian of such items, had access to the locker in which the thiruvabharanam, such other jewellery and coins etc., were safe-kept and therefore, the other members of the Bharana Samithy had no occasion to suspect that the ornaments were missing. Suspicion, rightly, arose among the members of the Bharana Samithy when at some occasions, the 6th and 7th respondents objected to certain jewellery that was in the locker, from being adorned on the deity, citing various reasons. The other members immediately demanded that the locker be opened by the 6th and 7th respondents and its contents revealed to them forthwith, to ensure and secure presence of all assets and the thiruvabharanam. It was when they were confronted with such

immediacy that the 6th and 7th respondents confessed that they had to misappropriating and mortgaging in their personal capacity, various ornaments and gold coins safe-kept in the locker, to private financiers.”

15. Respondent Nos.4 and 5 would contend that all possible steps were taken on unearthing the misappropriation. That, the administrative committee was fully dissolved and an ad-hoc committee assumed charge. Immediate steps were taken for a fresh election and new Bharana Samithy was accordingly constituted in October 2021. The ad-hoc committee eventually handed over charge to the 5th respondent committee. On the same day of its assumption the 5th respondent in its very first meeting decided to pursue the case against the 6th and 7th respondents. Exhibit R4(m) is a copy of the minutes of that meeting. Stating so, these respondents took the stand that there is absolutely no reason for conducting an enquiry as envisaged in Section 38 of the Act.

16. The learned counsel appearing for respondents No. 8 and 9 would contend that in the case of the 4th respondent-Temple, no enquiry under Section 38 of the Act is possible; since it is a Temple not amenable to the control of the respondent-Board. It is contended that even on treating the 4th respondent as a public Temple, the remedy that can be availed is only under Section 92 of the Code of Civil Procedure, 1908. In this regard, the learned counsel placed reliance on the decisions in Subramonia Pillai Chellam Pillai v. Subramonia Pillai Chathan Pillai and others [1953 KLT 117], Biswanath v. Thakur Radha Ballabhli [AIR 1967 SC 1044]. The said decisions are regarding mismanagement of the public Temple and the remedies available under Section 92 of the Code in the event of such mismanagement. Here the question is totally different. The relief claimed is to give a direction to the 1st respondent to discharge its statutory obligation under Sections 37 and 38 of the Act. The petitioners claim a constitutional remedy in that matter and the question therefore is only whether there is breach of statutory obligation warranting this court to issue a writ of mandamus. Therefore, the said decisions have no application.

17. The first question to be decided is as to whether the Temple is a Hindu religious endowment. Section 2(b) of the Act defines ‘Hindu religious endowments’ as follows,-

“(b) Hindu Religious Endowment” means- (i) every Hindu temple or shrine or other religious endowment dedicated to, or used as of right by, the Hindu community \or any section thereof; and (underline supplied)

(ii) every other Hindu endowment or foundation, by whatever local designation known, and property, endowments and offerings connected therewith, whether applied wholly to religious purposes or partly to charitable or other purposes, and very express or constructive trust by which property or money is vested in the hands of any person or persons by virtue of hereditary succession or otherwise for such purposes: but shall not include my Hindu religious institution belonging to and under the sole management of a single family:

Provided that, where the Management of religious institution has passed into the hands of several branches by division among the members of the original family, the institution may nevertheless be considered as being in the management of single family for the purpose of this Part.

Explanation.- The expression "hereditary succession" shall include succession to a "Guru" by a disciple by nomination or otherwise;"

18. Every Hindu Temple where members of the Hindu community or any section thereof have right for worship is therefore a Hindu Religious Endowment. The only exception is religious institutions under the sole management of a single family. The proviso envisages that a religious institution managed by a fragmented family also is an exception.

19. From the description about the management of the Temple in paragraph No.5 of the counter affidavit filed by respondent Nos.4 and 5 it is obvious that the 4th respondent-Temple is open for worship for all members of Hindu community. As such it is a Hindu Religious Endowment. It is not managed by a family or a fragmented family. If so, Sections 37 and 38 of the Act applies to the 4th respondent-Temple.

20. The question then is whether, in the light of the decision of the 1st respondent, not to take over the Temple, can there be a direction as claimed by the petitioners? Ext. P2 is a report submitted by the 3rd respondent regarding the requirement of an enquiry into the matter. The 2nd respondent-Commissioner was convinced from that report and an enquiry was directed. The Assistant Commissioner did an enquiry. From Exts.P3 and P4, which are the reports of the Assistant Commissioner and the Finance Commissioner of the Devaswom Board, it is seen that the enquiry was not conducted since the 5th respondent Samithy denied access to the records in their custody. Stating so, they had reported that no enquiry could be conducted. The said approach of the Assistant Commissioner and the Finance Commissioner of the Devaswom Board is quite inappropriate.

21. Section 39 of the Act provides that the officers conducting enquiry under Section 38 of the Act have the powers of a civil court for summoning and enforcing the attendance of the witnesses or causing the production of documents. The officers can administer oaths to persons summoned and examine them as witnesses. Therefore, the officers, who are empowered to conduct enquiry, ought to have completed the enquiry and submit their reports. They should not have shied away by showing doubtful ignorance of their powers.

22. It is an admitted fact while respondent Nos.6 and 7 were the President and Secretary of the Bharana Samithy, misappropriation occurred. It can be seen from Ext.R4(e), copy of the F.I.R. in Crime No.552 of 2021 and also Ext.P11, a copy of order under Section 451 of the Code of Criminal Procedure, 1973, releasing on interim custody the properties seized by the police, 350.25 grams of gold, 43.56 grams of silver and Rs.1,68,870/- were lost from the Temple. It may

be true that once the misappropriation has come to the notice, necessary remedial steps were taken by the Bharana Samithy. But the fact remained that there occurred such a huge loss of properties of the Deity. It cannot be said that the mismanagement, which resulted in such a loss can be looked at the individual level only and it cannot be attributed to the institution.

23. That apart, there is an allegation that 85 Ares of land belonging to the 4th respondent-Deity is not now in the possession of the Temple. It is the definite plea of the Devaswom Board that 85 Ares of land in Sy.No.354/14 is shown in the revenue records as Manakkattu Devaswom Thanathu land. If so, the reason for loss of that property also may have to be answered by the management of the Temple. In such circumstances, we are of the view that the 1st respondent-Devaswom Board is obligated to hold an enquiry as provided under Section 38 of the Act.

24. As rightly contended by the learned counsel for respondents No.4 and 5 only if two mandatory conditions, namely, there is mismanagement and the same is proved, the 1st respondent get jurisdiction to invoke the provisions of Section 37 of the Act. For deciding that, the 1st respondent should conduct the enquiry which the Board has already ordered through its officers, and reach a logical conclusion. Accordingly, this Writ Petition is allowed and the 2nd respondent-Commissioner is directed to conduct an enquiry under Section 38 of the Act and take appropriate follow up action. Needless to say that the enquiry shall be conducted with notice to the petitioners and all the affected persons. The enquiry shall be completed as expeditiously as possible, at any rate, within a period of four months from the date of getting a certified copy of this judgment.