

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ANIL K. NARENDRA

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 18TH DAY OF NOVEMBER 2021 / 27TH KARTHIKA, 1943

W.P.(C)NO.23704 OF 2021

PETITIONER/S:

SATHEESH,
AGED 38 YEARS,
S/O. SADANANDAN, MANGATTUVELI, EZHUPUNNA SOUTH P.O.,
CHERTHALA, ALAPPUZHA-688524.

BY ADV L.RAM MOHAN

RESPONDENT/S:

- 1 THE TRAVANCORE DEVASWOM BOARD,
DEVASWOM HEAD QUARTERS, NANTHANCODE, KAWDIAR POST,
THIRUVANANTHAPURAM, KERALA-695 003, REPRESENTED BY
ITS COMMISSIONER.
- 2 THE ASSISTANT COMMISSIONER,
OFFICE OF THE ASSISTANT COMMISSIONER, TRAVANCORE
DEVASWOM BOARD, VAIKOM, VAIKOM-686 141.
- 3 THE ADMINISTRATIVE OFFICER,
THURAVOOR MAHAKSHETRAM, THURAVOOR P.O., CHERTHALA,
PIN - 688 532.
- 4 THE ASSISTANT ENGINEER,
PUBLIC WORKS DEPARTMENT (PWD) ROAD DIVISION,
PATTANAKKAD, PATTANAKAD P.O., CHERTHALA, ALAPPUZHA-
688 533.
- 5 HIGHWAY AUTHORITY AND EXECUTIVE ENGINEER,
OFFICE OF THE EXECUTIVE ENGINEER, NATIONAL HIGHWAY
DIVISION, MINI CIVIL STATION, THATHAMPALLY P.O.,
ALAPPUZHA-688 013.
- 6 THE INSPECTOR OF POLICE,
STATION HOUSE OFFICER, KUTHIYATHOD POLICE STATION,
KUTHIYATHODU P.O., CHERTHALA, ALAPPUZHA-688 524.

- 7 ADDL R7. THE VILLAGE OFFICER,
THURAVUR SOUTH VILLAGE, THURAVUR,ALAPPUZHA DISTRICT,
PIN-688 532
- 8 ADDL R8. THURAVUR GRAMA PANCHAYAT
THURAVUR P.O., ALAPPUZHA DISTRICT, PIN -688 532,
REPRESENTED BY ITS SECRETARY (ARE SUO MOTU IMPEADED
AS ADDITIONAL RESPONDENTS 7 AND 8 AS PER ORDER DATED
30-10-2021 IN WP(C))
- 9 ADDL.R9. THE DISTRICT COLLECTOR,
CIVIL STATION, ALAPPUZHA-688 001.
- 10 ADDL.R10. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT (ROADS DIVISION) ,
COLLECTORATE BUILDING, ALAPPUZHA-688 001.
(ADDITIONAL RESPONDENTS 9 AND 10 ARE SUO MOTU
IMPEADED AS PER ORDER DATED 18-11-2021 IN WP(C) .
BY ADVS.
S. RAJ MOHAN, SR. GOVERNMENT PLEADER

G.SANTHOSH KUMAR, SC FOR TRAVANCORE DEVASWOM BOARD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18.11.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“CR”**JUDGMENT****Anil K. Narendran, J.**

The petitioner is a resident of Valleshodu near Thuravoor Mahakshethram, a temple under the administrative control of the 1st respondent Travancore Devaswom Board. The petitioner has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding respondents 1 to 3 as well as the 6th respondent-Station House Officer of Kuthiyathodu Police Station to remove the shops put up on the road margin and the land on the side of Chavadi-Thuravoor Junction Road and National Highway-66, which lies on the northern and eastern side of Thuravoor Mahakshethram, in connection with the annual festival which commenced on 27.10.2021. The petitioner has also sought for a writ of mandamus commanding the 6th respondent Station House Officer to ensure free flow of traffic through Chavadi-Thuravoor Junction Road and National Highway-66, during the annual festival in Thuravoor Mahakshethram, which commenced on 27.10.2021.

2. On 29.10.2021, when this writ petition came up for

admission, the learned Standing Counsel for Travancore Devaswom Board took notice on admission for respondents 1 to 3. The learned Government Pleader took notice on admission for respondents 4 to 6. The learned Standing Counsel for Travancore Devaswom Board and also the learned Government Pleader were directed to get instructions from the officers concerned. Registry was directed to show the name of the learned Advocate Commissioner appointed in W.P.(C)No. 22291 of 2021 in the cause list and list the matter on 30.10.2021 at 10.15 a.m., in a special sitting, along with that writ petition. In the order dated 29.10.2021 this Court noticed the order dated 18.01.2013 of the Apex Court in SLP(Civil)No.8519 of 2006 **[Union of India v. State of Gujarat and others]**, whereby the Apex Court issued a general direction to the effect that from the date of that order the Government of Kerala shall not grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places. In the said order the Apex Court made it clear that the said order shall not apply to installation of high-mast lights, street lights or construction relating to electrification, traffic,

toll or for development and beautification of streets, highways, roads, etc., and relating to public utility and facilities.

3. On 30.10.2021 the learned Standing Counsel for Travancore Devaswom Board has filed a statement on behalf of respondents 1 to 3, producing therewith Annexure R1(a) relevant extract of the land register pertaining to Thuravoor Devaswom. Along with I.A.No.1 of 2021 the petitioner has placed on record Ext.P10 series of photographs showing the panthal erected over the public road on the northern side of Thuravoor Mahakshethram and also the temporary stalls put up on either side of Chavadi-Thuravoor Junction Road. The petitioner has also filed additional affidavit dated 29.10.2021 explaining how he got the notice dated 24.10.2021, which is marked as Ext.P1 in the writ petition.

4. On 30.10.2021, it was submitted by the learned Senior Counsel for Travancore Devaswom Board that, as stated in paragraph 3 of the statement, Thuravoor Mahakshethram is situated in Sy.No.171/4B of Thuravoor South Village and the property having an extent of 6 Acres and 66 cents, which includes kshethram, kshethrakulam and the properties situated nearby. Towards the eastern side of the kshethrakulam, the

Temple is having an extent of 38 cents, out of which an extent of 8.44 cents was taken for road widening and now 6 Acres and 29 cents of land is with the Devaswom. Along with the statement, the relevant extract of the Land Register pertaining to Thuravoor Devaswom is placed on record as Annexure R1(a). The learned Senior Counsel submitted that Chavadi-Thuravoor Junction Road was laid through Devaswom property. The learned Senior Counsel pointed out that the boundary on the southern side of a private property covered by Document No.1776/92 is shown as 'Devaswom Thanathu Purayidam'. The learned Senior Government Pleader on instructions from the Village Officer, Thuravoor South Village, submitted that the property having an extent of 2 Hectares and 69.12 Ares in Sy.No.171/4B of Thuravoor South Village stands in the name of Thuravoor Mahakshethram, as temple property, pond and as karamozhivu bhoomi.

5. In the order dated 30.10.2021, this Court observed that, from the submissions made by the learned Senior Government Pleader and also the submissions made by the learned Senior Counsel for the Travancore Devaswom Board, it appears that Chavadi-Thuravoor Junction Road is laid through

Devaswom property. Having considered the submissions made by the learned counsel on both sides, this Court *suo motu* impleaded the Village Officer, Thuravoor South Village, and also Thuravoor Grama Panchayat represented by its Secretary, as additional respondents 7 and 8.

6. Pursuant to the order of this Court the learned Advocate Commissioner has submitted a report dated 01.11.2021, reporting that Chavadi-Thuravoor Junction Road is lying on the northern side of Thuravoor Mahakshethram. The road margin on the southern side is having interlocking concrete blocks pavement. On the northern side of the road, the work of laying interlocking concrete blocks is not fully completed. Temporary shops are erected on the road margin, on either side of Chavadi-Thuravoor Junction Road. Front portion of some of the shops on the southern side are projecting to the tarred portion. The concerned traders have agreed to keep the entire articles within the permissible extent. On the northern side temporary shops are erected on interlocking concrete blocks pavement and on the mud margin. Almost all the shops on the northern side are within the road margin. In front of some those shops, articles are protruding

into tarred portion of the road. The traders have agreed to remove the same and to keep it within the road margin. A portion of Devaswom property on the eastern side of Temple pond was acquired for widening National Highway-66 and the Devaswom is having the balance extent. The Advocate Commissioner was informed that Chavadi-Thuravoor Junction Road is laid through Devaswom property and there is no transfer of ownership of the land to Public Works Department.

7. The 4th respondent-Assistant Engineer, PWD Roads Sub Division, Cherthala, has filed a statement wherein it is stated that Thuravoor-Kumbalangi road is a major district route which passes through the side of Thuravoor Mahakshethram. Certain shops are put up by the vendors who claim to be successful bidders in the auction conducted by the Travancore Devaswom Board in connection with the Temple festival. The shops are put up on either side of the road. The polls on which canopy of those shops are fixed are abutting the tar end of the road. No encroachment is seen on the tarred surface of the road. But poles are put up abutting the tarred road, occupying the entire road. No request was made to the Public Works Department, by the Devaswom or any other

person seeking permission to put up shops. The 4th respondent has not granted any permission to put up the shops. By putting up such shops free flow of vehicle will not be affected. But the movement of pedestrians will be obstructed.

8. The 6th respondent Station House Officer of Kuthiyathodu Police Station has filed a statement, wherein it is stated that, to maintain law and order and to conduct the Temple festival in a peaceful atmosphere a bandovast scheme was prepared and submitted before the Deputy Superintendent of Police, Cherthala. To maintain smooth flow of traffic through the National Highway, sufficient number of Police personnel are deployed throughout the junction and in the temple premises. The festival in Thuravoor Mahakshethram is from 27.10.2021 to 04.11.2021. A huge gathering of devotees is expected from 02.11.2021 to 04.11.2021, which may create obstruction to the vehicular traffic through Chavadi-Thuravoor Junction Road and hence alternative arrangement can be made through K.P.Junction-Nalukulangara road for the vehicles from Chavadi and Pullithodu area. Necessary arrangements have already been made to ensure that the orders passed by this Court are being implemented in letter and spirit.

9. The additional 7th respondent-Village Officer, Thuravoor South Village, has filed a statement wherein it is stated that Thuravoor-Kumbalangi road passes through Sy.No.171/4B of Thuravoor South Village. The total extent of the property in this survey number is 2 hectares and 69.12 Ares. As per settlement register this land is settled as 'Thuravoor Kshethravum Kulavum Karamozhivu Bhoomi' in the possession of Travancore Devaswom Board. The southern portion of the road, wherein shops are put up is comprised in Sy.No.171/4B. On the northern side of the road, the property up to the boundary of Kuthiyathodu Village is also comprised in Sy.No.171/4B. The western boundary of the land comprised in Sy.No.171/4B can only be ascertained with the help of Taluk Surveyor, after conducting survey. The shops are put up in the land comprised in Sy.No.171/4B, which is settled as Devaswom land, as per survey records.

10. The learned Standing Counsel for Travancore Devaswom Board has filed additional statement on behalf of respondents 1 to 3, wherein it is stated that Chavadi-Thuravoor Junction Road is laid on Devaswom property situated on the northern side of Thuravoor Mahakshethram.

The public way was in existence for about 100 years, which was later tarred by the Public Works Department, without the permission of the Travancore Devaswom Board. On one side of that road, interlocking concrete blocks are laid by the Public Works Department recently, without the consent of Travancore Devaswom Board. On the other side the work is not fully completed. Laying of interlocking concrete blocks will not confer any title or right to the Public Works Department to restrict the Devaswom Board from using both sides of the road. However, the Board has no intention to obstruct free passage of vehicular traffic through that road. Respondents 1 to 3 would point out that the Public Works Department have no case that the said property was obtained by way of acquisition or surrender. The Kerala Water authority, before laying pipeline through the said property for 'Japan Drinking Water Project', sought consent from the Devaswom, which would show that it is Devaswom property. Along with the additional statement, respondents 1 to 3 have placed on record Annexure R1(c) layout of the temporary shops on the southern side and the eastern side of Thuravoor Mahakshethram and also the layout of the temporary shops at the main entrance of the

Temple, approved by the Assistant Engineer, Travancore Devaswom Board, Vaikom; Annexure R1(d) judgment of this Court dated 27.03.2015 in W.P.(C)No.4941 of 2015 laying down general guidelines in auctioning temporary shops in Ettumanoor Sree Mahadeva Temple; and Annexure R1(e) Circular dated 13.07.2015 issued by the Devaswom Commissioner, in compliance with the directions contained in the judgment of this Court dated 19.03.2015 in W.P.(C)No.3206 of 2014, stipulating general guidelines for auctioning temporary shops in temple premises.

11. On 02.11.2021, when this writ petition came up for consideration this Court passed an interim order, which reads thus;

“In the additional statement of the 7th respondent Village officer, it is stated that the property on either of Chavady-Thuravoor Junction road is comprised in Survey No.171/4B of Thuravoor South Village. As per the Settlement Register, this land is settled as 'Thuravoor Kshethravum Karamozhivu Bhoomi' which is in possession of Travancore Devaswom Board.

The Advocate Commissioner in paragraphs 2 and 3 of this report dated 01.11.2021 has pointed out certain encroachments on public road by putting up temporary stalls in connection with the annual festival of Thuravoor

Mahakshethram. In the said report, it is stated that the respective shop owners have already agreed to remove the encroachment.

In case, any such encroachment is not yet removed, the 6th respondent Station House Officer shall take necessary steps to remove such encroachment on public road."

12. Today, by a separate order, the District Collector, Alappuzha and the Executive Engineer, Public Works Department (Roads Division), Alappuzha are *suo motu* impleaded as additional respondents 9 and 10. The learned Senior Government Pleader took notice for additional respondents 9 and 10.

13. Heard the learned counsel for the petitioner, the learned Standing Counsel for Travancore Devaswom Board for respondents 1 to 3, the learned Senior Government Pleader for respondents 4 to 6 and also for the additional respondents 7, 9 & 10 and the learned Standing Counsel for additional 8th respondent Grama Panchayat.

14. The relief sought for in this writ petition is a writ of mandamus commanding respondents 1 to 3 as well as the 6th respondent-Station House Officer to remove the shops put up on the road margin and the land on the side of Chavadi-

Thuravoor Junction Road and also National Highway-66, in connection with the festival in Thuravoor Mahakshethram which commenced on 27.10.2021, to ensure free flow of traffic through those roads. In the statement filed on behalf of respondents 1 to 3 it is stated that the property of Thuravoor Mahakshethram, situated in Sy.No.171/4B of Thuravoor South Village, is having an extent of 6 Acres and 66 cents, which includes kshethram, kshethrakulam and the properties situated nearby. Towards the eastern side of the kshethrakulam, the Devaswom was having an extent of 38 cents, out of which an extent of 8.44 cents was taken for road widening. Now 6 Acres and 29 cents of land is with the Devaswom. Annexure R1(a) is the relevant extract of the Land Register pertaining to Thuravoor Devaswom.

15. The stand taken in the statement filed by the additional 7th respondent-Village Officer is that the road in question passes through Sy.No.171/4B of Thuravoor South Village. The total extent of the property in this survey number is 2 hectares and 69.12 Ares. As per per settlement register this land is settled as 'Thuravoor Kshethravum Kulavum Karamozhivu Bhoomi' in the possession of Travancore

Devaswom Board. The southern portion of the road, wherein shops are put up is comprised in Sy.No.171/4B. On the northern side of the road, the property up to be boundary of Kuthiyathodu Village is also comprised in Sy.No.171/4B. According to the additional 7th respondent-Village Officer, the western boundary of the land comprised in Sy.No.171/4B can be ascertained only with the help of Taluk Surveyor, after conducting survey. The learned Standing Counsel for Travancore Devaswom Board would point out that the boundary on the southern side of a private property covered by Document No.1776/92 is shown as 'Devaswom Thanathu Purayidam'. As stated in the additional statement, Chavadi-Thuravoor Junction Road is laid on Devaswom property situated on the northern side of Thuravoor Mahakshethram. On one side of that road, interlocking concrete blocks are laid by the Public Works Department, without the consent of Travancore Devaswom Board. However, the Board has no intention to obstruct free passage of vehicular traffic through that road.

16. 'Deva' means God and 'swom' means ownership in Sanskrit and the term 'Devaswom' denotes the property of God

in common parlance. [see: **Prayar Gopalakrishnan and another v. State of Kerala and others - 2018 (1) KHC 536**]

17. In **A.A. Gopalakrishnan v. Cochin Devaswom Board [(2007) 7 SCC 482]** a Three-Judge Bench of the Apex Court held that the properties of deities, temples and Devaswom Boards are required to be protected and safeguarded by their trustees/archakas/shebait/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of 'fences eating the crops' should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

18. In **A.A. Gopalakrishnan**, on the facts of the case

on hand, the Apex Court noticed that, when Respondents 3 to 5 claimed ownership of Survey No.1043, which was the front portion of the temple premises in the possession of the temple (in the proposal for settlement dated 06.07.2000), the Devaswom Board, instead of investigating and verifying as to how they could claim ownership over temple property, strangely agreed for a settlement under which the temple was to get Sy.No.1043 (which was a temple land already in its possession), in exchange for giving away another temple land (Sy.No.1042/2) to Respondents 3 to 5. The Board Resolution dated 29.08.2000 agreeing for the settlement proposal clearly records that Sy.No.1043 is already in the possession of the temple. Before the Apex Court, respondents 3 and 4 contended that the settlement in the suit (O.S.No.399 of 1998) was validly arrived at between them (the plaintiffs) and the Devaswom Board (the defendant), that the Devaswom Board had considered the proposal after taking legal advice and had duly passed a resolution to settle the suit. It was further contended that a decree having been made in terms of the compromise and such decree having attained finality, it cannot be questioned, interfered or set aside at the instance of a third

party in a writ proceeding. They relied on the provisions of Order XXIII, Rule 3A of the Code of Civil Procedure, 1908, which provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The Apex Court held that, the bar contained in Order XXIII, Rule 3A will not come in the way of the High Court examining the validity of a compromise decree, when allegations of fraud/collusion are made against a statutory authority which entered into such compromise. While it is true that decrees of civil courts which have attained finality should not be interfered with lightly, challenge to such compromise decrees by an aggrieved devotee, who was not a party to the suit, cannot be rejected, where fraud/collusion on the part of officers of a statutory board is made out. Further, when the High Court by the order dated 09.09.1998 had directed the Board to take possession of Sy.No.1042/2 immediately from Respondents 3 and 4 in CDB No.3 of 1996, in a complaint by another devotee, it was improper for the Board to enter into a settlement with Respondents 2 and 3, giving up the right, title and interest in Sy.No.1042/2, without the permission of the court which passed such order. The Apex Court concluded that,

viewed from any angle, the compromise decree cannot be sustained and is liable to be set aside.

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

20. In **Mohanan Nair** the Division Bench relied on the

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

order to prevent fraud and redress the abuses in their management. In the celebrated **Rameswar Pagoda case [(1874) 1 Ind App 209]** it was pointed out by the Judicial Committee that the former rulers of this country always asserted the right to visit endowments of this kind to prevent and redress the abuses in their management. The authorities, therefore, support the conclusion that supervision and control of Hindu Religious and Charitable Institutions is a function of government and that Government at all times asserted and exercised the power. The fact that Government did not exercise the power immediately when it became aware of the circumstances vitiating Ext.P1 order cannot prejudice the interest of the Devaswom. If the contention of the petitioner were to prevail, it would mean that because the Government was not very vigilant in exercising the power the interest of the Devaswom should suffer. Section 10 of the Limitation Act, 1963, provides no period of limitation for a suit against a person in whom the trust property has become vested for any specific purpose or against his legal representatives or assigns for the purpose of following in his or their hands such property. The reason behind the section is that an express trust ought

not suffer by the misfeasance or non-feasance of a trustee.

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

Court. The High Court will consider these aspects in public interest, in accordance with law, and issue such judicial directions as becomes necessary having regard to individual fact situation.

22. In **Nandakumar v. District Collector and others [2018 (2) KHC 58]** a Division Bench of this Court noticed that the legal position has been made clear by the Apex Court as to the role to be played by the High Court in exercising the 'parens patriae' jurisdiction in **Gopalakrishnan v. Cochin Devaswom Board [(2007) 7 SCC 482]**. The said decision was referred to and relied on by a Division Bench of this Court in **Travancore Devaswom Board v. Mohanan Nair [2013 (3) KLT 132]**. In the said circumstances, the properties of the Devaswom, if at all encroached by anybody and if any assignment/conveyance has been effected without involvement of the Devaswom, securing 'pattayam' or such other deeds, the same cannot confer any right upon the parties concerned, unless the title so derived is clear in all respects. There cannot be any dispute that the remedy to retrieve such property belonging to the Devaswom is by resorting to the course stipulated in the Kerala Land Conservancy Act, 1957.

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

24. The specific stand taken in the statement filed on behalf of Travancore Devaswom Board, relying on Annexure R1(a) relevant extract of the Land Register pertaining to Thuravoor Devaswom, is that the property having an extent of 2 Hectares and 69.12 Ares in Sy.No.171/4B of Thuravoor South Village stands in the name of Thuravoor

Mahakshethram, as temple property, pond and as karamozhivu bhoomi. The stand taken by the additional 7th respondent Village Officer in the statement filed before this Court is to the effect that, as per settlement register, the aforesaid property is settled as 'Thuravoor kshethravum kulavum karamozhivu bhoomi' in the possession of Travancore Devaswom Board. The southern portion of the road, wherein shops are put up, is comprised in Sy.No.171/4B. On the northern side of the road, the property up to be boundary of Kuthiyathodu Village is also comprised in Sy.No.171/4B. The western boundary of the land comprised in Sy.No.171/4B can only be ascertained with the help of Taluk Surveyor, after conducting survey. The shops are put up in the land comprised in Sy.No.171/4B, which is settled as Devaswom land, as per survey records.

25. In such circumstances, the additional 9th respondent District Collector is directed to take necessary steps to fix the boundary of the property of Thuravoor Mahakshethram, on the side of Chavadi-Thuravoor Junction Road, with the help of the Taluk Surveyor, after conducting a survey in accordance with law, with notice to the 4th respondent Administrative Officer, the Secretary of the 8th respondent Grama Panchayat, the 5th

respondent Executive Engineer of National Highway Division and also the additional 10th respondent Executive Engineer of the Public Works Department (Roads Division). Any such survey by the Taluk Surveyor should be with proper notice to other affected parties, if any..

26. After obtaining the survey report and plan, the 3rd respondent Administrative Officer shall take necessary steps to protect the property of Thuravoor Mahakshethram on either side of Chavadi-Thuravoor Junction Road, from any encroachment whatsoever. The 3rd respondent, based on the survey conducted by the Taluk Surveyor, shall prepare the layout of the temporary shops on the Devaswom property abutting Chavadi-Thuravoor Junction Road, with proper notice to the additional 10th respondent Executive Engineer, Public Works Department (Roads Division), Alappuzha. While preparing such layout of temporary shops to be erected during festival season, the 3rd respondent shall ensure that the erection of any such shops will not cause any obstruction whatsoever to the movement of traffic through the carriage way of Chavadi-Thuravoor Junction Road and also movement of pedestrians through the pedestrian facilities provided on

either side of that road.

27. Before preparing the layout of the temporary shops to be erected during festival season on any Devaswom land abutting the service road of National Highway-66, the 3rd respondent shall consult the 5th respondent Executive Engineer, National Highway Division, Alappuzha. No temporary stalls shall be erected on the service road of National Highway-66 and any such shops can be erected during temple festival only on any Devaswom land abutting that service road, without causing any obstruction whatsoever to the movement of vehicles and pedestrians through that road. Once the survey report and plan of the Taluk Surveyor is obtained, the 3rd respondent shall finalise the layout of the temporary shops, as directed above, within a period of three months.

28. The document produced as Annexure R1(c) along with the additional statement filed by respondents 1 to 3 is the layout of the temporary shops on the southern side and the eastern side of Thuravoor Mahakshethram and also the layout of the temporary shops at the main entrance of the Temple, approved by the Assistant Engineer, Travancore Devaswom Board, Vaikom.

29. In **Sreekumar V. v. Travancore Devaswom Board [2015 (2) KHC 714]**, a Division Bench of this Court in which one among us [AKN(J)] is a party, directed the Travancore Devaswom Board to incorporate the conditions enumerated in clauses (i) to (xiii) in Para 6 of the order dated 09.02.2015 in W.P.(C)No.3206 of 2014 with necessary modifications in all tender notifications issued by the Board to conduct public auction of the right to open temporary stalls/shops on the Devaswom property of all the temples under the Devaswom, treating it as general guidelines. In that writ petition, this Court was dealing with the irregularities pointed out in the conduct of the public auction of the right to conduct temporary stalls/shops on the Devaswom property of Sree Vallabha Maha Temple, Thiruvalla, during the annual festival season. Clauses (i) to (xiii) in Para 6 of the order dated 09.02.2015 read thus:

- “(i) The auction shall be confined to 49 plots identified in the site sketch prepared by the Assistant Engineer, Travancore Devaswom Board, Thiruvalla and produced before this Court;
- (ii) The upset price for the plots shall be as mentioned in the statement prepared by the Assistant Engineer,

Travancore Devaswom Board, Thiruvalla and produced before this Court;

(iii) The auction shall be conducted in the presence of the Chief Vigilance Officer of the Board, who shall ensure that the intending bidders are not prevented in any manner by persons with vested interests. The Chief Vigilance Officer shall also seek Police assistance for the smooth conduct of the auction, if found necessary;

(iv) At the time of auction, the bidders shall carry their voter's identity card issued by the Election Commission of India or any other proof of identity recognised by the Government and shall also furnish a self-attested photostat copy of the identity card to the Officer conducting the auction.

(v) The intending bidders shall produce the requisite EMD by way of Demand Draft drawn in their name.

(vi) No bidder shall be permitted to bid for more than one plot. If there are vacant plots after the auction, such plots shall be put to auction on the very next day at the very same time. In the absence of sufficient number of bidders on the second day, more than one plot can be allotted to a single bidder;

(vii) No licensee shall be permitted to put up more than one stall/shop on a single plot;

(viii) No person shall be permitted to conduct any stall/shop in an area other than that shown in the sketch prepared by the Assistant Engineer, Travancore Devaswom Board, Thiruvalla;

(ix) No licensee shall have the right to re-auction/sub-let the plot to a third party and if any such instance comes to the notice of the Board, the Board shall be entitled to cancel such license forthwith and evict the licensee from the plot, by forfeiting the entire license fee. But the Board shall give the licensee a reasonable time to remove his articles;

(x) The licensee should personally conduct the business in the stall/shop put up on the plot taken in auction and he should also carry his proof of identity with him while conducting such business;

(xi) No licensee shall be permitted to occupy the plot allotted to him beyond the period of the license. But it would be open to the Board to give a grace period up to one week, after collecting proportionate license fee, to enable the licensee to remove his articles from the plot or for selling the balance articles;

(xii) No member of the Temple Advisory Committee or their near relations, or the employees of the Travancore Devaswom Board or their near relations shall be entitled to participate in the auction either personally or as a nominee of another;

(xiii) No bidder shall interfere with the conduct of any religious rites, rituals, customs, practises and other ceremonies of the temple. Bidders shall be bound to follow the temple manners and instructions issued by the Board from time to time, failing which he will be summarily evicted after forfeiting the entire license fee."

30. In **K.N. Sreekumar v. Travancore Devaswom**

Board [2015 SCC OnLine Ker 11672] - Judgment dated 27.03.2015 in W.P.(C)No.4941 of 2015 - a Division Bench of this Court in which one among us [AKN(J)] is a party, held that, in view of the judgment in **Sreekumar V.**, any public auction of the right to open temporary shops/stalls in the Devaswom ground in front of Ettumanoor Sree Mahadeva Temple temple and also in the Kovil Padam Road owned by the Devaswom can be conducted only in terms of the general guidelines framed in that judgment. By the judgment dated 27.03.2015 that writ petition was disposed of with the following directions;

"1. The Travancore Devaswom Board shall conduct public auction of the right to open temporary shops/stalls in the premises of Ettumanoor Sree Mahadeva Temple and also in the Kovil Padam Road strictly in terms of the guidelines issued by this Court in the judgment dated 19.3.2015 in W.P.(C) No. 3206 of 2014 and TDB Report No. 13 of 2015, with necessary modifications.

2. The auction shall be confined to the shops earmarked in Annex.A1 and A2 sketches prepared by the Executive Engineer, Travancore Devaswom Board, Kottayam, who shall ensure that pits of the size of 4 inches diameter and 1½ feet depth at 4 corners of each of the plots earmarked in Annex.A1 and A2 are provided so as to

enable the auctioneers to insert pillars in it for erecting their shops.

3. Annex.A1 and A2 sketches showing the demarcation of the shops/stalls shall be displayed in front of the auction hall so that the prospective bidders can have a fair idea as to the location of the shops.

4. Advocate Sri. A.S.P. Kurup, the Chairman of the Temple Advisory Committee appointed by this Court shall take necessary steps for conducting the auction well in advance and the entire process shall be completed at least seven days before the commencement of festival season. The Office of the Travancore Devaswom Board shall meet the expenses incurred by him for conducting the auction and they shall give wide publicity of the auction proposed to be held.

5. The Officers of the Board shall ensure that the conduct of business in the stalls/shops does not in any way affect the free ingress and egress of the devotees in any manner.

6. In order to have free ingress and egress of the devotees and for their free movement, the entry of two wheelers and other vehicles including petty traders, lottery sellers, etc., shall not be permitted in the area between the Kalyanamandapam up to the Aalthara, i.e., for a distance of 10 meters from the Kalyana-mandapam, which can be ensured by putting up a steel chain or temporary fence during the festival seasons, without causing any obstruction for the movement of elephants.”

31. In compliance with the directions contained in the

judgment of this Court dated 19.03.2015 in W.P.(C)No.3206 of 2014, the Devaswom Commissioner has issued Annexure R1(e) Circular dated 13.07.2015 stipulating general guidelines for auctioning temporary shops in temple premises. In the temporary shops erected in the Devaswom land during festival season, as per the layout prepared by the 3rd respondent Administrative Officer, traders shall be permitted to conduct their respective trade or business strictly in compliance of the general guidelines stipulated in Annexure R1(e) circular.

32. In this writ petition, the petitioner has sought for a writ of mandamus commanding the 6th respondent Station House Officer to ensure free flow of traffic through Chavadi-Thuravoor Junction Road and National Highway-66, during the annual festival in Thuravoor Mahakshethram, which commenced on 27.10.2021. Along with I.A.No.1 of 2021, the petitioner has placed on record Ext.P10 series of photographs showing the panthal erected over the public road on the northern side of Thuravoor Mahakshethram and also the temporary stalls put up on either side of Chavadi-Thuravoor Junction Road.

33. Pursuant to the order of this Court the learned

Advocate Commissioner has submitted a report dated 01.11.2021, wherein it is stated that temporary shops are erected on the road margin, on either side of Chavadi-Thuravoor Junction Road. Front portion of some of the shops on the southern side are projecting to the tarred portion. The concerned traders have agreed to keep the entire articles within the permissible extent. The road margin on the southern side is having interlocking concrete blocks pavement. On the northern side of the road the work of laying interlocking concrete blocks is not fully completed. On the northern side temporary shops are erected on interlocking concrete blocks pavement and on the mud margin. Almost all the shops on the northern side are within the road margin. In front of some of those shops articles are protruding into tarred portion of the road. The traders have agreed to remove the same and to keep it within the road margin.

34. In the statement filed by the 4th respondent-Assistant Engineer, PWD Roads Sub Division, it is stated that the shops put up by the vendors, who claim to be successful bidders in the auction conducted by the Travancore Devaswom Board in connection with the Temple festival, are on either side

of the road. The polls on which canopy of those shops are fixed are abutting the tar end of the road. No encroachment is seen on the tarred surface of the road. The 4th respondent has not granted any permission to put up the shops. By putting up such shops free flow of vehicle will not be affected. But the movement of pedestrians will be obstructed.

35. In the statement filed by the 6th respondent Station House Officer it is stated that to maintain smooth flow of traffic during the festival in Thuravoor Mahakshethram, sufficient number of Police personnel are deployed throughout the junction and in the temple premises. A huge gathering of devotees is expected from 02.11.2021 to 04.11.2021, which may create obstruction to the vehicular traffic through Chavadi-Thuravoor Junction Road and hence alternative arrangement can be made through K.P.Junction-Nalukulangara road for the vehicles from Chavadi and Pullithodu area.

36. In **C.S.S. Motor Service v. Madras State [AIR 1953 Madras 279]** a Division Bench of the Madras High Court held that all public streets and roads vest in the State, but that the State holds them as trustee on behalf of the public. The members of the public are entitled as beneficiaries to use them

as a matter of right and this right is limited only by the similar rights possessed by every other citizen to use the pathways. The State as trustees on behalf of the public is entitled to impose all such limitations on the character and extent of the user as may be requisite for protecting the rights of the public generally. In **Saghir Ahmad v. State of U.P. and others [AIR 1954 SC 728]** a Constitution Bench of the Apex Court agreed with the statement of law made by the Division Bench of the Madras High Court in Para. 24 of the decision in **C.S.S. Motor Service.**

37. In **Sodan Singh v. New Delhi Municipal Committee [1989 (4) SCC 155]** a Constitution Bench of the Apex Court held that the primary object of building roads is undoubtedly to facilitate people to travel from one point to another.

38. The Indian Roads Congress has issued Guidelines for Pedestrian Facilities vide IRC:103-2012. Paragraph 3 of the said guidelines deals with the scope of those guidelines. These guidelines cover engineering design and planning aspects of pedestrian facilities on road sides and road crossings in urban and semi-urban areas (para 3.2). The guidelines are intended

for use by the local authorities responsible for creating and maintaining semi urban road transport facilities and the guidelines are framed to serve the objectives of universal accessibility and social equity for sustainable transportation (para 3.3). Paragraph 4 of the guidelines deals with general principles.

39. In **Shali v. State of Kerala [2019 (5) KHC 118]** this Court held that, as per Para.4.2 of the Guidelines for Pedestrian Facilities [IRC:103-2012], an effort should be made to create such conditions that pedestrians are not forced to walk in unsafe circumstances, and that motorists respect the position of pedestrian. The Guidelines for Pedestrian Facilities have the approval of the Ministry of Road Transport and Highways (MoRTH). Every Local Authority in the State is bound to provide pedestrian facilities on public roads in conformity with these guidelines.

40. In **Kottamom (Kottiyar Mangalam) Sri.Darmasastha Temple Advisory Committee v. State of Kerala [2019 (5) KHC SN 27]** this Court held that, in view of the Guidelines for Pedestrian Facilities formulated by the Indian Roads Congress, vide IRC:103-2012, no parking of

vehicles is legally permissible on the 'footpath', which is the portion of right of way of road used for the movement of pedestrians. Any such parking of vehicles on the footpath of public streets will force pedestrians to walk in unsafe circumstances, which will adversely affect the mobility and safety of all pedestrians including those with disabilities and reduced mobility.

41. In exercise of the powers under Section 118 of the Motor Vehicles Act, 1988 and in supersession of the Rules of Road Regulations, 1989, the Central Government made the Motor Vehicles (Driving) Regulations, 2017, vide G.S.R.634(E) dated 23.06.2017. Regulation 5 of the Motor Vehicles (Driving) Regulations, 2017 deals with duties of drivers and riders. As per clause (4) of Regulation 5, the driver and the riders shall take special care and precautions to ensure the safety of the most vulnerable road users such as pedestrians, cyclists, children, elderly and the differently-abled persons. Regulation 22 deals with stopping and parking. As per sub-clause (c) of clause (2) of Regulation 22, a vehicle shall not be parked on footpath, cycle path and pedestrian crossing. Regulation 39 deals with pedestrian crossing, footpath and cycle track. As per

sub-clause (3) of Regulation 39, when a road is provided with a footpath or cycle track, no vehicle shall drive on such footpath or track, except on the directions of a Police Officer in uniform or where traffic signs permitting some movements have been displayed.

42. In **Sivaprasad v. State of Kerala and others [2020 (6) KHC 373]** this Court held that, in view of the law laid down in **Kottamom (Kottiyar Mangalam) Sri. Darmasastha Temple Advisory Committee [2019 (5) KHC SN 27]**, once the National Highways/State Highways are constructed as per the standards and guidelines prescribed by the Indian Roads Congress, it has to be maintained as such without any encroachment on the right of way or on the pedestrian facilities provided as per such standards and guidelines.

43. In **Sivaprasad** this Court held that, the primary object of building roads is to facilitate people to travel from one point to another and carriage of goods. Footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose

frustrates the very object for which they are carved out from portions of public streets. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements.

44. In **Sivaprasad** this Court held further that, removal of encroachments on the footpaths or pavements over which the public has the right of passage or access cannot be regarded as unreasonable, unfair or unjust. The State, being the principal protector of the rights of its citizens, keeping in view the doctrine of public trust, should not permit any encroachments on the footpaths or pavements. Nobody has got a right to erect any structures on roads. The State is not an exception. The National Highways and State Highways constructed by acquiring private property and by using public funds, can be used only for the travelling needs of public. It cannot be converted for other collateral purposes like erection of statues and memorials.

45. Section 5 of the Kerala Public Ways (Restriction of

Assemblies and Processions) Act, 2011 deals with regulation of conduct of festivals, assemblies, meetings, etc. In **Basil Attipetti v. State of Kerala and others [2012 (2) KHC 85]** a Division Bench of this Court declared clause (c) of subsection (1) of Section 5 of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 as violative of the fundamental rights of the citizens conferred under Article 19(1) (d) and Article 21 of the Constitution of India, by virtue of the operation of Article 13(2) of the Constitution. The Division Bench upheld the constitutional validity of clauses (a) and (d) of subsection (1) of Section 5 of the Act, subject to limitations and restrictions on permissions to be granted, as stated in Paras.9 to 11 of the judgment.

46. It is pertinent to note that, by the order dated 18.01.2013 in SLP(Civil)No.8519 of 2006 [**Union of India v. State of Gujarat and others**], the Apex Court issued a general direction to the effect that, from the date of that order the Government of Kerala shall not grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places. The Apex Court made it clear that the said order shall

not apply to installation of high-mast lights, street lights or construction relating to electrification, traffic, toll or for development and beautification of streets, highways, roads, etc., and relating to public utility and facilities. The above order was made applicable to all other States and Union Territories and the concerned Chief Secretary/Administrator is directed to ensure compliance of that order. Paragraphs 2 to 5 of the order dated 18.01.2013 in I.A.No.10 of 2012 in SLP(Civil)No.8519 of 2006 read thus;

"2. Mr. M.T. George, learned counsel for the State of Kerala placed before us a copy of the order dated September 7, 2011 passed by the Government of Kerala granting permission for installation of statue of late Shri N. Sundaran Nadar, Ex-Deputy Speaker of Kerala Legislative Assembly near to Neyyattinkara – Poovar Road in the curve turning to the KSRTC Bus Stand Neyyattinkara in the Kanyakumari National Highway near bus stand.

3. We have our doubt whether such permission could have been granted by the State Government for installation of statue on the national highway.

4. Until further orders, we direct that the status quo, as obtaining today, shall be maintained in all respects by all concerned with regard to the Triangle Island where statue of late Shri N. Sundaran Nadar has been permitted to be sanctioned. We further direct that

henceforth, State Government shall not grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places. Obviously, this order shall not apply to installation of high mast lights, street lights or construction relating to electrification, traffic, toll or for development and beautification of the streets, highways, roads, etc. and relating to public utility and facilities.

5. The above order shall also apply to all other states and union territories. The concerned Chief Secretary/ Administrator shall ensure compliance of the above order." (underline supplied)

47. The order of the Apex Court dated 18.01.2013 in I.A.No.10 of 2012 in SLP(Civil)No.8519 of 2006 was in relation to the permission granted by the State of Kerala, by an order dated 07.09.2011, for installation of statue of late Shri.N.Sundaran Nadar, Ex-Deputy Speaker of Kerala Legislative Assembly near to Neyyattinkkara-Poovar Road in the curve turning to KSRTC bus stand, Neyyattinkkara in Kanniyakumari National Highway.

48. By the order dated 05.07.2013 in SLP(Civil) No.8519 of 2006, the Apex Court directed the States and Union Territories to state on affidavit the position with regard

to unauthorised structures including unauthorised religious structures on public roads, pavements, sideways and other public utility places as existing on 30.06.2013 in their respective States and the steps taken up to 30.06.2013 for removal of such unauthorised structures. In the said order, the Apex Court noticed the submission of the learned counsel for the States of Madhya Pradesh, Kerala, Punjab and Rajasthan that they have already filed their affidavits. By the order dated 05.07.2013, the Apex Court directed the States of Madhya Pradesh, Kerala, Punjab and Rajasthan to file fresh affidavits indicating the position as on 30.06.2013.

49. By the order dated 31.01.2018 in SLP(Civil) No.8519 of 2006 and connected cases, the Apex Court ordered that the implementation of its orders should be supervised by the concerned High Courts. Consequently, the Apex Court remitted the matters to the respective High Courts for ensuring implementation of orders in an effective manner. While ordering transmission of concerned records to the respective High Courts, the Apex Court ordered that, the interim orders wherever passed shall continue, until the matters are considered by the High Courts. In case any clarification is

required, it would be open to the parties to approach the Apex Court. The High Court will have the jurisdiction to proceed in the contempt of any of the orders passed by the Apex Court.

50. Despite the enactment of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 by the State Legislature and the law laid down by the Apex Court and this Court in the decisions referred to supra, the State, Local Authorities and also the law enforcement machinery have not taken necessary steps to to ensure strict enforcement of the relevant statutory provisions and also the Guidelines for Pedestrian Facilities formulated by Indian Roads congress [IRC:103-2012], in order to prevent encroachment of any nature, in any form, either temporary or permanent, on the right of way or on the pedestrian facilities on public roads, since any such encroachment will adversely affect the mobility and safety of all pedestrians including those with disabilities and reduced mobility.

51. Once roads are constructed as per the standards and guidelines prescribed by the Indian Roads Congress, it has to be maintained as such without any encroachment on the right of way or on the pedestrian facilities provided as per such

standards and guidelines. Footpaths are not intended for stocking articles for trade or for display of goods by traders, in front of their shops or establishments. Similarly, footpaths are not intended for holding campaigns, demonstrations, etc., by political parties and other organisations, by causing obstructions to free movement of pedestrians. No political party or organisation can be permitted to encroach footpath or right of way of public roads, in connection with any such protest, demonstrations, etc., by erecting any temporary structures on the right of way or on the pedestrian facilities, forcing pedestrians including those with disabilities and reduced mobility to walk in unsafe circumstances.

52. Showing scant regard to the law laid down in the decisions referred to supra, political parties and various organisations are permitted to put up structures on footpaths and even on the right of way on public roads, all over the State. The protesters/agitators having political backing are even permitted to lay carpet and place chairs on the footpath. On account of such encroachments, pedestrians including those with disabilities and reduced mobility are forced to walk through the right of way of public roads, in unsafe

circumstances.

53. The prohibition imposed by the Apex Court in the decision in **Union of India v. State of Gujarat and others** [SLP(Civil)No.8519 of 2006], whereby the Government of Kerala is restrained, with effect from 18.01.2013, from granting any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places, is being flouted by permitting unauthorised hoardings, structures like resting places for headload workers, bus shelters constructed by political and other organisations, etc., on public roads, pavements, footpaths, etc. Such encroachments are even permitted in front of the Office of the Local Self Government Institutions.

54. The law laid down by this Court in **Shali [2019 (5) KHC 118]**, **Kottamom (Kottiyar Mangalam) Sri.Darmasastha Temple Advisory Committee [2019 (5) KHC SN 27]** and **Sivaprasad [2020 (6) KHC 373]** that every Local Authority in the State is bound to provide pedestrian facilities on public roads in conformity with the Guidelines for Pedestrian Facilities [IRC:103-2012] and that,

once the National Highways/State Highways are constructed as per the standards and guidelines prescribed by the Indian Roads Congress, it has to be maintained as such without any encroachment on the right of way or on the pedestrian facilities provided as per such standards and guidelines is also being flouted by permitting encroachments on the right of way and on the pedestrian facilities.

55. The Government of India has initiated National Highways Development Programme (NHDP) that relies substantially on Public Private Partnerships as a means of attracting private capital, improving efficiencies and reducing costs. Several states are pursuing similar programmes based on Public Private Partnerships in state highways. For awarding Public Private Partnership projects within a competitive, efficient and economic framework based on international best practices, Government of India has adopted a Model Concession Agreement (MCA) for Public Private Partnerships in National Highways. On similar lines, the Planning Commission has published a Model Concession Agreement for State Highways. These Model Concession Agreements follow the Design, Build, Finance and Operate (DBFO) approach that

requires the Concessionaire to bear the responsibility for detailed design. However, the accountability for providing safe and reliable roads ultimately rests with the Government and the Model Concession Agreement, therefore, mandates a Manual of Standards and Specifications that the Concessionaire must conform to. It was felt that a Standard Manual of Specifications and Standards should be brought out by the Indian Roads Congress (IRC) to ensure uniformity of approach and to facilitate easy implementation by various State Governments. For evolving standards conforming to the Design, Build, Finance and Operate approach, the Planning Commission asked the Indian Roads Congress to develop a Manual of Specifications and Standards for Two-lane Highways, which would, by reference, form an integral part of the Model Concession Agreement and would be binding on the Concessionaire. Its provisions would be enforceable and any breach would expose the Concessionaire to penalties, including termination of the concession.

56. The Indian Roads Congress has formulated Manual of Specifications and Standards for Two-laning of Highways through Public Private Partnership, vide IRC:SP:73-2007. The

Manual is to be used in relation to Schedule D of the Model Concession Agreement. Besides integrating the Manual into the concession agreement, the said schedule permits deviations from the Manual to address project-specific requirements. The Manual reflects a delicate balance that was arrived at after several rounds of expert and stakeholder deliberations with a view to ensuring development of quality roads and at the same time improving their financial viability by optimising on costs and obligations.

57. As per Para.1.1 of IRC:SP:73-2007, the scope of the work shall be as defined in the concession agreement. Two-laning/two-laning with paved shoulders of the Project Highway shall be undertaken and completed by the Concessionaire as per the Specifications and Standards set forth in this Manual. As per Para.1.2, the Project Highway and the project facilities shall conform to the design requirements set out in this Manual which are the minimum prescribed. As per Para.1.5, the Codes, Standards and Technical Specifications applicable for the design of project components are: (i) Indian Roads Congress (IRC) Codes and Standards, as per Appendix-2; (ii) Specifications for Road and Bridge Works,

Ministry of Shipping, Road Transport & Highways; and (iii) any other standards referred to in the Manual and any supplement issued with the bid document. As per Para.1.6, the latest version of the Codes, Standards, Specifications, etc. notified/published at least 60 days before the last date of bid submission shall be considered applicable.

58. The Indian Roads Congress has also formulated Manual of Specifications and Standards for Four-laning of Highways through Public Private Partnership, vide IRC:SP:84-2009. The said Manual of Specifications and Standards also contains provisions similar to that in IRC:SP:73-2007. Para.2.12.2 of IRC:SP:84-2009 provides for service roads. As per Para.2.12.2.1 the location and length of service roads to be constructed by the Concessionaire shall be as specified in Schedule B of the concession agreement. The width of the service roads shall be 7.0 meter.

59. The service roads provided on the side of National Highway and bypass constructed as per the Manual of Specifications and Standards prescribed by the Indian Roads Congress in IRC:SP:73-2007 or IRC:SP:84-2009 are for vehicular traffic, which cannot be converted as a parking space

for commercial or other establishments, religious institutions, etc., or even for putting up temporary structures in connection with festivals in temples, churches, mosques, etc., or for putting up temporary structures as resting place for headload workers, etc., or for putting up bus shelters by political parties or by any other organisations.

60. Section 198A of the Motor Vehicles Act, 1988, inserted by Section 84 of the Motor Vehicles (Amendment) Act, 2019, which came into force with effect from 01.09.2019, vide S.O. 3147(E) dated 30.08.2019, deals with failure to comply with standards for road design, construction and maintenance. As per sub-section (1) of section 198A, any designated authority, contractor, consultant or concessionaire responsible for the design or construction or maintenance of the safety standards of the road shall follow such design, construction and maintenance standards, as may be prescribed by the Central Government from time to time. As per sub-section (2), where failure on the part of the designated authority, contractor, consultant or concessionaire responsible under sub-section (1) to comply with standards for road design, construction and maintenance, results in death or disability,

such authority or contractor or concessionaire shall be punishable with a fine which may extend to Rs.1,00,000/- and the same shall be paid to the Fund constituted under Section 164B.

61. As per sub-section (3) of Section 198A, for the purposes of sub-section (2), the court shall in particular have regard to the matters enumerated in clauses (a) to (g), namely, (a) the characteristics of the road, and the nature and type of traffic which was reasonably expected to use it as per the design of road; (b) the standard of maintenance norms applicable for a road of that character and use by such traffic; (c) the state of repair in which road users would have expected to find the road; (d) whether the designated authority responsible for the maintenance of the road knew, or could reasonably have been expected to know, that the condition of the part of the road to which the action relates was likely to cause danger to the road users; (e) whether the designated authority responsible for the maintenance of the road could not reasonably have been expected to repair that part of the road before the cause of action arose; (f) whether adequate warning notices through road signs, of its condition had been

displayed; and (g) such other matters as may be prescribed by the Central Government. As per Explanation, for the purposes of Section 198A, the term 'contractor' shall include sub-contractors and all such persons who are responsible for any stage in the design, construction and maintenance of a stretch of road.

62. As already noticed hereinbefore, the service roads provided on the side of National Highway and bypass constructed as per the Manual of Specifications and Standards prescribed by the Indian Roads Congress in IRC:SP:73-2007 or IRC:SP:84-2009 cannot be converted as a parking space for commercial or other establishments, religious institutions, etc., or even for putting up temporary structures in connection with festivals in temples, churches, mosques, etc. or in connection with any protest by any political parties or for putting up temporary structures as resting place for headload workers, etc., or for putting up bus shelters by political parties or by any other organisations. Such service roads are for vehicular traffic, which has to be maintained as such, in conformity with the relevant standards prescribed by the Indian Roads Congress. The State holds public roads as a trustee on behalf

of the public. By permitting encroachments on public roads by way of temporary structures on the right of way or on the pavements or on the pedestrian facilities provided on such roads, on political considerations or otherwise, the State Government or the concerned Local Self Government Institution is committing breach of trust. Any failure on the part of the designated authorities, contractor, consultant or concessionaire in maintaining the safety standards of public roads will attract the penal consequences provided under Section 198A of the Motor Vehicles Act.

63. It is pertinent to note that by the order dated 16.11.2021 in SSCR No.9 of 2021, we have directed the State of Kerala, represented by the Chief Secretary to Government; the Principal Secretary to Government, Public Works Department; and the Project Director, National Highway Authority of India, Thiruvananthapuram, to take necessary steps to ensure strict compliance of the directions contained in the decision referred to supra by all concerned, in letter and spirit, by maintaining the roads and pedestrian facilities in the State, strictly in conformity with the relevant standards and guidelines, without any encroachment whatsoever on the right

of way or on the pedestrian facilities provided as per such standards and guidelines, in order to ensure the safety of most vulnerable road users, such as pedestrians, cyclists, children, elderly and the differently-abled persons.

In such circumstances, this writ petition is disposed of by directing the respondents herein to take necessary steps to ensure strict compliance of the directions contained in this judgment and the law laid down in the decisions referred to supra, in letter and spirit, by ensuring that any temporary stalls erected in connection with any festival in Thuravoor Mahakshethram is without any encroachment whatsoever on the right of way or on the pedestrian facilities provided as per the relevant Specifications and Standards on Chavadi-Thuravoor Junction Road and National Highway-66, in order to ensure the safety of most vulnerable road users, such as pedestrians, cyclists, children, elderly and the differently-abled persons, and also to ensure free movement of vehicular traffic through the carriage way of those roads and the service road on the side of the National Highway. The directions contained in paragraphs 25 to 27 of this judgment regarding fixation of the boundary of the property of Thurvoor Mahakshethram and

preparation of layout of temporary shops to be erected during festival season, shall be complied with by the concerned respondents, within the time limit fixed by this Court.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

MIN

APPENDIX OF WP(C) NO.23704 OF 2021

PETITIONER'S EXHIBITS:

- Exhibit P1 TRUE COPY OF THE NOTICE DATED
24/10/2021 OF THE FESTIVAL IN
THURAVOOR MAHAKSHETHRAM.
- Exhibit P2 THE PHOTOGRAPHS OF THE SHOPS PUT UP ON
EITHER OF THE SIDE OF CHAVADI-THURAVOOR
JUNCTION ROAD.
- Exhibit P3 TRUE COPY OF THE PHOTOGRAPH OF THE
SHOPS PUT ON THE SPACE BETWEEN THE
EASTERN TEMPLE POND AND THE NATIONAL
HIGHWAY 66.
- Exhibit P4 TRUE COPY OF THE JUDGMENT DATED IN WPC
NO. 33129/2015.
- Exhibit P5 TRUE COPY OF THE APPLICATION DATED
12/02/2015 SUBMITTED BY THE PETITIONER.
- Exhibit P6 TRUE COPY OF THE REPLY DATED
16/02/2015.
- Exhibit P7 TRUE COPY OF THE LETTER DATED
25/10/2018 ISSUED BY THE 5TH
RESPONDENT.
- Exhibit P8 TRUE COPY OF THE PETITION DATED
26/10/2021.
- Exhibit P9 TRUE COPY OF THE ACKNOWLEDGMENT DATED
28/10/2021.
- Exhibit P10 PHOTOGRAPHS OF THE PROTION OF THE ROAD
COVERED BY THE PANDAL

RESPONDENTS'S EXHIBITS:

- ANNEXURE - TRUE COPY OF THE RELEVANT PAGE OF THE
R1 (a) LAND REGISTER PERTAINING TO THE
THURAVOOR DEVASWOM**
- ANNEXURE - TRUE COPY OF THE ORDER DATED 01.11.2021
R1 (b) ISSUED**
- BY THE TRAVANCORE DEVASWOM BOARD**
- ANNEXURE - TRUE COPY OF THE LAYOUT OF TEMPORARY
R1 (c) SHOPS AT SOUTH SIDE, EAST SIDE AND MAIN
ENTRANCE APPROVED BY THE ASSISTANT
ENGINEER TDB VAIKOM.**
- ANNEXURE - TRUE COPY OF THE JUDGMENT DATED
R1 (d) 27.03.2015 IN WPC NO.4941 OF 2015 OF
THIS HON'BLE COURT.**
- ANNEXURE - TRUE COPY OF THE CIRCULAR
R1 (e) DATED 13.07.2015 ISSUED BY
THE DEVASWOM COMMISSIONER.**