



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE G. GIRISH

MONDAY, THE 30TH DAY OF OCTOBER 2023 / 8TH KARTHIKA, 1945

WP(C) NO. 24711 OF 2023

PETITIONER/S:

P.N.SREERAMAN, AGED 58 YEARS
S/O NARYANASWAMI, SREELAKSHMI NIVAS, VELLINEZHI
POST, CHERPILASSERY, PLAKKAD DISTRICT, PIN 679504 AS
THE PRESIDENT HINDU AYKYA VEDI, CHERPULASSERY,
PLAKKAD DISTRICT, PIN - 679503

BY ADVS. KRISHNADAS P. NAIR
K.L.SREEKALA, HARIDAS P.NAIR
M.A.VINOD, M.RAJESH KUMAR
K.G.MANOJ KUMAR, SHINTO THOMAS
PRASOON.K.P, VISHNU PRASAD, ANU PRABHAKAR

RESPONDENT/S:

- 1 THE SECRETARY,
CHERPULASSERY MUNICIPALITY , PALAKKAD DISTRICT-,
PIN - 679503
- 2 THE COMMISSIONER,
MALABAR DEVASWAM BOARD, MALABAR DEVASWAM BOARD
OFFICE, ERANJIPPALAM, KOZHIKODE, PIN - 673006
- 3 THE ASSISTANT COMMISSIONER, MALABAR DEVASWAM
BOARD, THE ASSISTANT COMMISSIONER
OFFICE, KENATHUPARAMBU, KUNATHURMEDU PALAKKAD
DISTRICT-, PIN - 678013
- 4 THE MANAGING TRUSTEE
SREE AYYAPPAN KAVU, CHERPULASSERY, PALAKKAD
DISTRICT, PIN - 679503

BY ADVS.
SHAMEENA SALAHUDHEEN
K.MOHANAKANNAN
D.S.THUSHARA (K/76/2010)



OTHER PRESENT:

SRI R.LAKSHMI NARAYAN- STANDING COUNSEL- MALABAR
DEVASWOM BOARD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 30.10.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**J U D G M E N T****ANIL K. NARENDRAN, J.**

The petitioner, who is a devotee of Cherpulassery Sree Ayyappan Kavu, a temple, which is a controlled institution under the Malabar Devaswom Board, has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P1 agreement dated 23.02.2022 executed between the 4th respondent Managing Trustee of Cherpulassery Sree Ayyappan Kavu and the 1st respondent Secretary of Cherpulassery Municipality, regarding the construction of a toilet block in the temple property under "Take a Break" scheme. The petitioner has also sought for a writ of mandamus commanding respondents 1 to 4 to consider Ext.P2 representation dated 20.06.2023 made by the petitioner and stop the construction of toilet block in the temple property on the strength of Ext.P1 agreement. In the writ petition, the grievance of the petitioner is against the construction of a public toilet in the temple property of Cherpulassery Sree Ayyappan Kavu comprised in Re-survey No.76(2) of Cherpulassery Village. The construction of the toilet, under 'Suchithwamithra Toilet Construction Project' is in 5 cents of the temple property.

2. On 27.07.2023, when this writ petition came up for



admission, this Court admitted the matter on file. The learned Standing Counsel for Cherpulassery Municipality entered appearance for the 1st respondent and the learned Standing Counsel for Malabar Devaswom Board for respondents 2 and 3. Urgent notice by special messenger was ordered to the 4th respondent, returnable by 02.08.2023. By the order dated 27.07.2023, having considered the materials on record and also the submissions made at the Bar, this Court directed maintenance of *status quo* in respect of the construction in question, for a period of 2 weeks. In the said order, it was made clear that the building shall not be put to use till such time.

3. The 4th respondent, who is the managing trustee of Cherpuralssery Sree Ayyappan Kavu, has filed a counter affidavit dated 05.08.2023, producing therewith Exts.R4(a) and R4(b) documents. Paragraphs 4 to 10 of the said counter affidavit read as follows:

"4) At the outset it is submitted that the averments and allegations in the Writ Petition against the 4th Respondent is absolutely false. The contention that the 4th Respondent has granted permission to the 1st Respondent for construction of public toilet and agreed to pay an amount of Rs.20,00,000/- as the beneficiary contribution to the 1st Respondent as per Ext.P1 is absolutely false.

5) In fact on a request of the Devaswom to the Municipal



Chairman that since the toilet facility available is insufficient in the Temple, it may be included in the Shuchithwa Mission and sanction a toilet. True copy of the communication sent by the 4th Respondent to the Municipal Chairman, Cherpulassery Municipality dated 16.11.2021 is produced herewith and marked as Exhibit R4(a). Accordingly, Ext.P1 agreement was entered into on 23.02.2022 only permitting to construct a toilet outside the Temple compound and it is about 120M from the compound wall of the Temple. The agreement was executed after discussing the matter in the presence of the Hereditary Trustee and also the President of the Punarudharana Committee and the 4th Respondent. The Devaswom has not paid any single amount for the purpose to the Municipality. Clause 5 of Ext.P1 clearly states that an amount of Rs.20,00,000/- is to be spent by the Municipality and not by the Temple. The Municipality had spent the amounts under the Shuchithwa Mission.

6) It is true that it is intending to the benefit of the public also but normally only the devotees will be benefited. The maintenance and all other operations are vested with the Municipality as could be seen from Clause 7 of the agreement. The construction was commenced in 2022 itself and the project was completed and the toilet complex was inaugurated on 30.04.2023. But in view of the interim order passed by this Hon'ble Court in the above Writ Petition, the use of the same has been deferred.

7) It is respectfully submitted that the toilet presently available within the Temple compound is an old one constructed more than 40 years back and it cannot be put to use of and that is within the Temple compound. It is already decided to be demolished. That is near the Temple pond in



the very same location. In view of the establishment of the new toilet the pilgrims are benefited.

8) The other allegations that the Devaswom has incurred loss, etc. are unfounded. There is no loss to the Temple. The permission was given only for constructing the toilet complex. No other rights have been divested. Only the construction and maintenance by the Municipality is permitted. This was only because the expenses in that regard from the Devaswom funds can be avoided.

9) It is also relevant to point out that the present toilet complex has been constructed by the Shuchithwa Mission and no kind of pollution is expected. The waste is being scientifically disposed. The contentions in the Grounds of the Writ Petition that the allotment of Temple land to the private Individuals for making profits is also not correct. There is no allotment of Temple land to the private Individuals and it is not intending for any profit as well. Only for the benefit of the pilgrims it was so decided.

10) The contention that the 4th Respondent has no authority, to transfer the Temple property to the 1st Respondent for public purposes is also not correct. There is no transfer of land to the 1st Respondent. It is only granting permission to construct a toilet complex for the use of the pilgrims as also the public with the Funds of the Municipality. That decision was taken by the Hereditary trustee as also the Punarudharana Committee and the 4th Respondent and the Hereditary Trustee and the Punarudharana Committee President are witnesses. To substantiate the present condition of the old existing toilet, the photograph of the old existing toilet and its condition is produced herewith and marked as Exhibit R4(b)."



4. The 1st respondent Secretary of Cherpulassery Municipality has filed a counter affidavit dated 01.09.2023, producing therewith Ext.R1(a) Site Plan of the toilet block in the temple property. Paragraphs 4 to 11 of the said counter affidavit read as follows:

"4. At the outset, it is submitted that the averments made in the Writ Petition are incorrect and only to mislead this Hon'ble Court. The toilet complex has been constructed by the Municipality utilizing the plan funds provided by the State as well as the Central Government and the same has been constructed in the temple property but outside the temple compound and adjacent to the PWD Road. The Ayyappan Kavu temple, Cherpulassery, Palakkad District is under the control of Malabar Devaswom Board. The temple property is situated in Re.Sy.No.76/2 of Cherpulassery Village. The decision to construct 'Take a break' Centres in public places attached to Libraries, Bus Stands places of worship, etc, especially for the benefit of women and children was taken by the Government as per G.O.(Rt)1401/2020 dated 27.7.2020. Based on the said Government Order, requests were forwarded by different local self government institutions to the State level co-ordination Committee. The different Grama panchayats under the Sreekrishnapuram Block panchayat also submitted their requests before the Co-ordination Committee and permission was granted for the same, subject to satisfying the conditions laid down in the G.O. This respondent undertook the construction of the toilet complex based on the permission granted as



well as the agreement entered into between the Municipality and the 4th respondent. The Toilet complex is constructed in 5 cents of the property owned by the Temple, in the car parking area, adjacent to the public road. After completion of the building, the same was inaugurated on 30.4.2023 without any demur from either the devotees or the public. A true copy of the Site Plan prepared by the Municipal Engineer of Cherpulassery Municipality is produced herewith and marked as Exhibit R1(a).

5. The averments in Para 2 is not correct. There was no complaint from any person either during the construction or after the completion of the building. The Petitioner who is a resident in the area never raised his voice and he submitted his 1st complaint on 23.6.2023, after about 2 months from the date of inauguration.

6. The averment that the 1st respondent approached the respondents 2 to 4 for permission to construct public toilets in the temple properties depicted in Para 3 is totally incorrect and contrary to facts. Sreekrishnapuram block Panchayat had applied for permission to construct toilets within the premises of various temples before the State level Co-ordination Committee and the committee had permitted to construct the same, outside the temple compound but within the area owned by the temple, where it can be beneficial for the people from all walks of life. The toilets were constructed only on the basis of the permission granted and it is with the consent and knowledge of the temple trust.

7. It is submitted that the averment that the 4th respondent has agreed to pay an amount of Rs.20 Lakhs



as beneficiary contribution to 1st respondent as part of agreement between 1st respondent & 4th respondent is totally false and made only for the purpose of filing this Writ Petition. The fund of Rs. 20,00,000/- required for the construction of toilets has been collected from the development fund, central and state funds of the Municipality

8. As per Ext.P1 agreement between the Municipality and the Managing trustee, the entire amount for the construction of the 'Take a Break' centre has been spent from the state funds and no amount has been paid by the 4th respondent.

9. As regards the averments in para 5 of the Writ Petition, it is submitted that, since the existing toilet in the temple is in a dilapidated condition, and finding that it would be beneficial for the hundreds of devotees who visit the temple every day, the 4th respondent came forward to enter into an agreement with the Municipality to construct the Toilet Complex outside the compound wall, in the parking area behind the shopping complex, near the public road, under the Shuchitwa Mission Scheme. The apprehension of the petitioner that the toilet complex will affect the faith and belief of the devotees is totally ill founded and made without any basis.

10. In answer to the averments in Para 6 and 7 it is submitted that the entire project has been done with the funds allotted to the Municipality as per decision taken in the Municipal Council and as per clause 7 of Ext.P1 agreement between the trust and the Municipality, the maintenance of the take a break centre would be vested in the Municipality and the Municipality would have the



right to seek the assistance of the Kudumbashree workers for its maintenance. Hence, the argument that the 4th respondent is bound to maintain the toilets is incorrect.

11. It is submitted that, in the light of decision no.4.13 dated 18.12.2020 of the State Decentralization Committee for planning and the permission of the temple authorities the construction was done under the supervision of the Suchitwa Mission. The Ayyappankavu Temple, Cherpulassery, popularly known as the 'Sabarimala of Malabar, is a prominent pilgrim centre visited by hundreds of devotees every day. The Municipality can construct only public toilets in areas mostly visited by the public, for the benefit of people belonging to all walks of life. The present site of the building will not in any way affect or harm the custom and faith of the devotees. It will only be beneficial for the entire public who visit the area."

5. On 14.09.2023, when this writ petition came up for consideration, this Court passed a detailed order, whereby the order of *status quo* granted on 27.07.2023 was modified by permitting the operation and maintenance of the toilet block for the time being, by the temple authorities. By that order, the learned Standing Counsel for Cherpulassery Municipality was directed to make available for the perusal of this Court the files relating to the construction of the toilet block in question.

6. Today, when this matter is taken up for consideration,



the learned Standing Counsel for Cherpulassery Municipality has made available for the perusal of this Court the files relating to the construction of the toilet block. As per the completion certificate dated 10.07.2023, the total project cost comes to Rs.17,49,470/- out of which Rs.6,47,304/-, is the Central Finance Commission Grand, Rs.6,06,676/- is Swachh Bharat Mission Fund (by the Central Government) and Rs.4,95,490/- is Suchitwa Mission Fund (by the State Government).

7. Heard the learned counsel for the petitioner, learned Standing Counsel for Cherpulassery Municipality for the 1st respondent, the learned Standing Counsel for Malabar Devaswom Board for respondents 2 and 3 and the learned counsel for the Managing Trustee of Cherpulassery Sree Ayyappan Kavu.

8. The document placed on record as Ext.P3 are few photographs of the toilet block constructed in the temple compound under "Take a Break" scheme of "Suchithwamithra Toilet Construction Project". The name of the Cherpulassery Municipality is also exhibited in the toilet block.

9. The 4th respondent Managing Trustee has filed a counter affidavit dated 05.08.2023, producing therewith Ext.R4(a) request dated 16.11.2021 made before the Chairman of Cherpulassery Municipality to sanction a toilet block in the temple



under the scheme "Suchithwa Mission" since the toilet facilities available in the temple are insufficient. It is thereafter that Ext.P1 agreement was entered into between respondents 1 and 4, on 23.02.2022 for constructing the toilet block in the temple compound near the parking ground, about 120 meters away from the compound wall of the temple. The construction of the building was completed and the toilet block was inaugurated on 30.04.2023. The document marked as Ext.R4(b), along with the counter affidavit, is a photograph of the old toilet block in the temple premises.

10. The 1st respondent has filed a counter affidavit dated 01.09.2023, producing therewith Ext.R1(a) site plan of the toilet block constructed in the temple compound, which is one prepared by its Municipal Engineer. In the counter affidavit, it is stated that, the required fund of Rs.20,00,000/- for the construction of the toilet block has been collected from the development fund of the Central and State funds of the Municipality. In the counter affidavit, it is pointed out that, as per clause (7) of Ext.P1 agreement, the operation and maintenance of "Take a Break" centre will be vested with the Municipality and the Municipality will have the right to seek the assistance of the Kudumbashree workers for its operation and maintenance. The stand taken in the



counter affidavit is that, in the light of the decision No.4.13 dated 18.12.2020 of the State Decentralization Committee for Planning and the permission of the temple authorities, the construction was done under the supervision of the Suchitwa Mission.

11. A perusal of Ext.P1 agreement would show that the Devaswom land having an extent of 5 cents in Sy.No.76/2 of Cherpulassery Village is utilized for the toilet block constructed by Cherpulassery Municipality. As per the terms of Ext.P1 agreement, the operation and maintenance of the toilet block is vested with the Municipality and the Municipality is having right even to auction the right of operation and maintenance of that toilet block to Kudumbashree units.

12. Section 29 of the Madras Hindu Religious and Charitable Endowments Act, 1951 deals with alienation of immovable trust properties by way of exchange, sale, mortgage or lease. Section 29 reads thus:

“29. Alienation of immovable trust property.- (1) Any exchange, sale or mortgage and any lease of any immovable property belonging to, or given or endowed for the purposes of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution:

Provided that before such sanction is accorded the particulars relating to the proposed transaction shall be



published in such manner as may be and prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner.

Provided further that the Commissioner, if he is satisfied that owing to any emergency or for some other reason to be specified in the order according sanction, it is not reasonably practicable to follow the procedure prescribed in the foregoing proviso, may, with the previous sanction of the Government, dispense with such procedure.

2) When according such sanction, the Commissioner may impose such conditions and give such directions as he may deem necessary regarding the utilization of the amount raised by the transaction the investment thereof and in the case of a mortgage, regarding the discharge of the same within a reasonable period.

(3) A copy of the order made by the Commissioner under this section shall be communicated to the State Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may within three months from the date of his receipt of a copy of the order, and any person having interest may within three months from the date of the publication of the order, appeal to the State Government to modify the order or set it aside.

(5) Nothing contained in this section shall apply to the inams referred to in Section 35."

13. As noticed in the order of this Court dated 14.09.2023, on a query made by this Court as to whether the 4th respondent



Managing Trustee has obtained permission of the 2nd respondent Commissioner, Malabar Devaswom Board, for entering into Ext.P1 agreement with the Secretary of Cherpulassery Municipality, the learned counsel for the 4th respondent submitted that no specific permission was obtained from the 2nd respondent Commissioner.

14. On 14.09.2023, during the course of arguments, the learned Standing Counsel for Malabar Devaswom Board made available for the perusal of this Court an order No.J5/793/2022/MDB(K.Dis) dated 12.04.2022 of the 2nd respondent Commissioner, Malabar Devaswom Board, giving administrative sanction for constructing a toilet block under Suchitwa Mission scheme in the Devaswom land of Thiruvilayanadu Bhagavathi Temple, which is the subject matter in the connected writ petition, i.e., W.P.(C)No.10862 of 2022. The operative portion of that order, which was extracted in paragraph 7 of the order of this Court dated 14.09.2023 reads thus;

“മേൽ സാഹചര്യത്തിൽ പാലക്കാട് ജില്ല, ശ്രീകൃഷ്ണപുരം ബ്ലോക്ക് പഞ്ചായത്തിന്റെ 2021-2022 വാർഷിക പദ്ധതിയിൽ ഉൾപ്പെടുത്തിയ 'ശുചിത്വമിത്ര' പദ്ധതി പ്രകാരം സർക്കാരിന്റെ "Take a Break' മാതൃകയിൽ ക്ഷേത്രം വക അനുയോജ്യമായ സ്ഥലത്ത് ഭക്തജനങ്ങൾക്ക് ഉപയോഗിക്കുന്നതിലേക്കായി പഞ്ചായത്ത് ഫണ്ട് ഉപയോഗിച്ച് ശുചിമുറി, സ്ഥലത്തിന്റെ ഉടമസ്ഥാവകാശം ക്ഷേത്രത്തിൽ നിലനിർത്തിക്കൊണ്ട്, നിർമ്മിക്കുന്നതിന് അനുമതി നൽകിക്കൊണ്ടും, പദ്ധതി



വിഹിതമായി ക്ഷേത്രഫണ്ടിന്റെ ലഭ്യതക്കനുസരിച്ച് പ്രവൃത്തിയുടെ ആകെ ചെലവിന്റെ അഥവാ പ്രവൃത്തിയുടെ എസ്റ്റിമേറ്റിന്റെ 10% പരമാവധി 50,000/- രൂപയിൽ നിജപ്പെടുത്തി അതാത് ക്ഷേത്രഫണ്ടിൽ നിന്നും അനുവദിക്കുന്നതിന് അനുമതി നൽകി കൊണ്ടും ഇതിനാൽ ഉത്തരവാകുന്നു. ക്ഷേത്രത്തിന്റെ ആചാര അനുഷ്ഠാനങ്ങൾക്ക് വിഷ്ണു വരുത്താതെയായിരിക്കണം ശുചിമൂറി പരിപാലനം നടത്തേണ്ടതെന്ന് പ്രത്യേകം നിഷ്കർഷിക്കുന്നു." (underline supplied)

15. In the order dated 14.09.2023, this Court noticed that, even if the 4th respondent has obtained similar permission from the 2nd respondent Commissioner for constructing a toilet block in the Devaswom land of Ayyappan Kavu Temple, Cherpulassery, an agreement with the terms and conditions in Ext.P1 cannot be entered into for the operation and maintenance of that building in the Devaswom land.

16. In **M.V. Ramasubbiar v. Manicka Narasimachara [(1979) 2 SCC 65]**, in the context of Sections 49, 51 and 52 of the Trusts Act, 1882, the Apex Court explained the nature of the fiduciary position of the trustee and his duties and obligations. It is the duty of the trustees of the property to be faithful to the Trust and execute any document with reasonable diligence in the manner of an ordinary prudent man of business would conduct his own affairs. A trustee could not, therefore, occasion any loss to the Trust and it is his duty to sell the property if at all that was



necessary, to the best advantage.

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, require to be protected and safeguarded by their trustees/archakas/shebaites/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of 'fence eating the crops' should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

18. 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]** a Three-Judge Bench of 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 Division Bench further noticed that 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 is the guardian of the deity and apart from the revisional jurisdiction under Section 103 of the Kerala Land Reforms Act, 1963, the High Court has inherent jurisdiction and the doctrine of *parens patriae* will also apply in exercising the jurisdiction.

19. Cherpulassery Sree Ayyappan Kavu is a controlled institution under the Malabar Devaswom Board. In view of the law laid down in the decisions referred to supra, it is the duty of the trustees of Cherpulassery Sree Ayyappan Kavu to be faithful to the Devaswom and manage, protect and safeguard the interests and properties of the Devaswom, with reasonable diligence. The Malabar Devaswom Board and its officials are duty-bound to exercise their supervisory control in order to ensure that the interests and properties of the Devaswom are protected and safeguarded by its trustees and the employees of the Devaswom. Any act of 'fence eating the crops' should be dealt with sternly.

20. In **T. Krishnakumar v. Cochin Devaswom Board [(2022) 4 KLT 798]** a Division Bench of this Court in which one



among us [Anil K. Narendran, J] was a party held that in view of the law laid down by this Court in **Abu K.S. v. Travancore Devaswom Board [2022 SCC OnLine Ker 1642: 2022:KER:6409]**, relying on the decision of the Apex Court in **M.V. Ramasubbiar v. Manicka Narasimachara [(1979) 2 SCC 65]**, while leasing out the buildings owned by the Devaswoms, the Cochin Devaswom Board and its officials have to ensure that proper income is generated from the said buildings. In such transactions, the Board and its officials have to show reasonable diligence in the manner of an ordinary prudent man of business to conduct his own affairs. The action of the Board as a trustee cannot be equated to that of mere landlord. The best interest of the Devaswoms under the control of the Board would be subserved only if income is generated.

21. In **T. Krishnakumar [(2022) 4 KLT 798]**, the Division Bench noticed that the major source of revenue of the Cochin Devaswom Board is the income received by way of offering by the devotees, the amount received from Vazhipadu and the revenue generated through the auction of temple premises for various activities in connection with rituals and festivals in the temples and also the rental income generated from the buildings owned by the respective Devaswoms. Therefore, while dealing



with the buildings owned by the Devaswoms, the Cochin Devaswom Board and its officials have to ensure that proper income is generated from the said building. In such transactions, the Board and its officials have to show reasonable diligence in the manner of an ordinary prudent man of business to conduct his own affairs, by ensuring that the lease rental or licence fee of the buildings owned by the Devaswoms is not lower than the prevailing market rent. The action of the Board in demanding lease rental or licence fee for the buildings owned by the Devaswoms taking into consideration the prevailing market rent cannot be termed as an action of the Board demanding exorbitant or rack-rent, since, while leasing out the buildings owned by the Devaswoms, the Board and its officials have to ensure that proper income is generated from the said buildings.

22. In **Rajan P.N. and another v. State of Kerala and others [2023 SCC OnLine Ker 5089]** a Division Bench of this Court in which one among us [Anil K. Narendran, J] was a party held that the aforesaid principle in **T. Krishnakumar [(2022) 4 KLT 798]** is equally applicable in the case of properties, including lands owned by the Temples under the Malabar Devaswom Board.

23. As already noticed in the order dated 14.04.2023, the permission that was granted by the 2nd respondent Commissioner,



Malabar Devaswom Board, while giving administrative sanction for constructing a toilet block under Suchitwa Mission Scheme in the Devaswom land of Thiruvilayanadu Bhavavathi Temple, which is the subject matter in W.P.(C)No.10862 of 2022 was for the construction of a toilet block similar to "Take a Break" under the Suchithwamithra Programme, for the use of the devotees, at a proper place in the temple compound. In that permission, which is extracted hereinbefore at paragraph No.14, it is made clear that the maintenance of toilet block shall be without violating the temple custom and practices.

24. A Government order dated 27.07.2020 bearing No. G.O(Rt)No.1401/2020/LSGD is available at page No.1 of the file handed over by the learned Standing Counsel for Cherpulassery Grama Panchayat. That Government order, which deals with construction of public toilets under "Take a Break" Scheme, reads thus;

"ഉത്തരവ്"

പരാമർശം (1) & (2) ഉത്തരവുകൾ പ്രകാരം വൃത്തിയും ശുചിത്വവും സുരക്ഷിതവുമായ 12000 ജോഡി പൊതുശുചി മുറികളും "ടേക്ക് എ ബ്രേക്ക്" വിശ്രമ കേന്ദ്രങ്ങളും പ്രത്യേകിച്ച് സ്ത്രീകൾക്കും യാത്രക്കാർക്കും ഉപയോഗിക്കാൻ സാധിക്കുന്ന തരത്തിൽ ദേശീയ-സംസ്ഥാന പാതയോരങ്ങളിലും, പാതയോരങ്ങളിൽ സ്ഥിതി ചെയ്യുന്ന സർക്കാർ/പൊതു മേഖല സ്ഥാപനങ്ങളുടെ പരിസരങ്ങൾ, തദ്ദേശ സ്ഥാപനങ്ങളുടെ ഓഫീസ്



പരിസരം വാണിജ്യ കേന്ദ്രങ്ങൾ ബസ് സ്റ്റാൻഡ്/ ബസ്സ്റ്റോപ്പ് പരിസരങ്ങൾ എന്നിവിടങ്ങളിലായി നിർമ്മിക്കുന്നതിനുള്ള പദ്ധതികൾ 2020-21 വാർഷിക പദ്ധതിയിൽ ഉൾപ്പെടുത്തി നടപ്പിലാക്കുന്നതിന് എല്ലാ തദ്ദേശ സ്വയംഭരണ സ്ഥാപനങ്ങൾക്കും നിർദ്ദേശം നൽകിയിരുന്നു. ഈ പദ്ധതി നടപ്പിലാക്കുന്നതിനായി അനുബന്ധമായി ചേർത്തിട്ടുള്ള തദ്ദേശസ്വയം ഭരണ സ്ഥാപനങ്ങൾക്കുള്ള മാർഗ്ഗനിർദ്ദേശങ്ങൾ അംഗീകരിച്ചു ഉത്തരവ് പുറപ്പെടുവിക്കുന്നു.”

25. A reading of the Government order dated 27.07.2020 would make it explicitly clear that the constructions of such toilet complexes intended for the use of public, giving right to the Local Self Government Institutions to make provision for the operation and maintenance of the toilet block by auctioning that right by way of public auction or entrusting the same to Kudumbasree Unit, cannot be permitted in temples, which are controlled institutions under the Malabar Devaswom Board. As evident from Ext.P3 photograph the name of Cherpualssery Municipality is exhibited prominently in the building, which is legally impermissible in respect of a building constructed in the Devaswom land.

26. During the course of arguments, the learned Standing Counsel for Cherpulassery Municipality and also the learned counsel for the 4th respondent Managing Trustee would submit that in terms of the directions contained in the order of this Court dated 14.09.2023, the operation and maintenance of toilet block is being



done by the temple authorities.

Having considered the submissions made at the Bar, we deem it appropriate to make the interim order dated 14.09.2023 absolute and this writ petition is disposed of by directing the 2nd respondent Commissioner, Malabar Devaswom Board to take an appropriate decision on the amount spent by Cherpualssery Municipality for the construction of the toilet block, with notice to the Secretary, Cherpulassery Municipality and the 4th respondent Managing Trustee of Cherpulassery Sree Ayyappan Kavu and also the petitioner in this writ petition. A decision as directed above shall be taken, as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a certified copy of this judgment.

**Sd/-
ANIL K. NARENDRAN, JUDGE**

**Sd/-
G.GIRISH, JUDGE**

sdk+



APPENDIX OF WP(C) 24711/2023

PETITIONER EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE AGREEMENT BETWEEN
1ST RESPONDENT AND THE 4TH RESPONDENT
DATED 23.02.2022
- EXHIBITP2 THE TRUE COPY OF THE COMPLAINT FILED BY
THE PETITIONERS AND OTHER DEVOTEES TO THE
RESPONDENTS DATED 20-06-2023
- EXHIBIT P3 TRUE COPY OF THE PHOTOGRAPHS OF
CONSTRUCTION

RESPONDENT EXHIBITS

- EXHIBIT R4 (A) TRUE COPY OF THE COMMUNICATION SENT BY
THE 4TH RESPONDENT TO THE MUNICIPAL
CHAIRMAN, CHERPULASSERY MUNICIPALITY
DATED 16/11/2021
- EXHIBIT R4 (B) TRUE COPY OF THE PHOTOGRAPH OF THE OLD
EXISTING TOILET AND ITS CONDITION
- EXHIBIT R1 (A) TRUE COPY OF THE SITE PLAN PREPARED BY
THE MUNICIPAL ENGINEER OF CHERPULASSERY
MUNICIPALITY