

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

Thursday, the 14th day of September 2023 / 23th Bhadra, 1945
WP(C) NO. 24711 OF 2023

PETITIONER:

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

RESPONDENT:

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

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the respondents to stop the constructions in the temple properties as per Exhibit P1, pending disposal of the writ petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this court's order dated 27/07/2023 and 02/08/2023 and upon hearing the arguments of M/S 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 Advocates for the petitioners, M/S SHAMEENA SALAHUDHEEN STANDING COUNSEL for the respondent 1, ADVOCATE R.LAKSHMI NARAYAN STANDING COUNSEL MALABAR DEVASWOM BOARD for respondent 2 and 3 and ADVOCATE K.MOHANAKANNAN, D.S.THUSHARA(K/76/2010) for respondent 4 the court passed the following:

p.t.o

ANIL K. NARENDRAN & SOPHY THOMAS, JJ.

W.P.(C)No.24711 of 2023

Dated this the 14th day of September, 2023

ORDER

Anil K. Narendran, J.

Sree Ayyappan Kavu Temple at Cherpulassery in Palakkad District is a controlled institution under the Malabar Devaswom Board. The petitioner, who is a devotee of Lord Ayyappa of Sree Ayyappan Kavu Temple, Cherpulassery, 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 entered into between the 1st respondent Secretary, Cherpulassery Municipality and the 4th respondent Managing Trustee of Sree Ayyappan Kavu Temple, regarding construction and maintenance of a toilet block in the temple compound, near the parking ground. The petitioner has also sought for a writ of mandamus commanding the 2nd respondent Commissioner, Malabar Devaswom Board and also respondents 1, 3 and 4 to consider Ext.P2 representation dated 20.06.2023 and to stop any construction in terms of Ext.P1 agreement. 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.

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 entered appearance for respondents 2 and 3. Urgent notice by speed post was ordered to the 4th respondent, returnable by 02.08.2023. By the order dated 27.07.2023, this Court directed that *status quo* in respect of the construction in question shall be maintained for a period of two weeks and that, the building shall not put to use till such time.

3. 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.

4. 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.

5. 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.

6. 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 would submit that no specific permission was obtained from the Commissioner.

7. During the course of arguments, the learned Standing Counsel for Malabar Devaswom Board has 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 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 വിഹ്നം വരുത്താതെയായിരിക്കണം ശുചിമുറി പരിപാലനം നടത്തേണ്ടതെന്ന് പ്രത്യേകം നിഷ്കർഷിക്കുന്നു.”

8. 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. We also notice that, irrespective of site conditions, a fixed sum of Rs.20,00,000/- is spent for constructing each toilet block under the "Suchithwamithra Toilet Construction Project".

9. Having considered the pleadings and materials on record and also the submissions made at the Bar, we deem it

appropriate to modify the order of *status quo* granted on 27.07.2023, by permitting the operation and maintenance of the toilet block, for the time being, by the temple authorities.

10. The learned Standing Counsel for Cherpulassery Municipality shall make available for the perusal of this Court the entire files relating to the construction of toilet block in Sree Ayyappan Kavu Temple.

11. The learned Standing Counsel for Malabar Devaswom Board shall make available for the perusal of this Court the files relating to the general order, if any, passed by the Malabar Devaswom Board, permitting construction, operation and maintenance of toilet blocks in Devaswom land by the concerned Local Self Government Institution, through Kudumbashree.

12. The respective Standing Counsel for Cherpulassery Municipality and Malabar Devaswom Board seek posting after three weeks.

List on 13.10.2023, along with W.P.(C)No.10862 of 2022.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

SOPHY THOMAS, JUDGE

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APPENDIX OF WP(C) 24711/2023

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| 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 |
| 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 |

