

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE P.G. AJITHKUMAR

TUESDAY, THE 25TH DAY OF OCTOBER 2022 / 3RD KARTHIA, 1944

WP (C) NO. 27446 OF 2020

PETITIONER/S:

SHILPA NAIR, AGED 45 YEARS
KARAKOICKAL HOUSE, THADIYLOOR,
THIRUVALLA, KERALA - 689545.

BY ADVS.
SUVIDUTT M.S
SMT.B.ANU

RESPONDENT/S:

- 1 STATE OF KERALA (DELETED)
REPRESENTED BY THE SECRETARY, PARLIAMENTARY
AFFAIRS AND REVENUE (DEVASWOM DEPARTMENT),
GENERAL ADMINISTRATION, SECRETARIAT TRIVANDRUM,
KERALA - 695 001.
- 2 STATE OF KERALA (DELETED)
REPRESENTED BY THE PRINCIPAL SECRETARY,
REVENUE DEPARTMENT, SECRETARIAT
TRIVANDRUM, KERALA - 695 001.
- 3 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM, KERALA - 695 001.
- 4 TRAVANCORE DEVASWOM BOARD (DELETED)
REPRESENTED BY ITS SECRETARY, NANTHANCOD, KAWDIAR
POST, THIRUVANANTHAPURAM, KERALA - 695 003.

RESPONDENTS 1,2 AND 4 ARE DELETED FROM THE PARTY
ARRAY, AT THE RISK OF THE PETITIONER AS PER ORDER
DATED 02.11.2021 IN IA 1/2021 IN WPC NO.
27446/2020.

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5 ADDL.R5.THE EXECUTIVE OFFICER
SREE PADMANABHA SWAMY TEMPLE,
ULSAVAMADAM BUILDING, NORTH NADA, FORT,
THIERUVANANTHAPURAM - 695023, KERALA,
ADDL, .R5 IS SUO MOTU MPLEADED AS PER ORDER DATED
IN WPC NO. 27446/2020

BY ADVS.
SRI.S.RAJMOHAN, SR. GP.
SHRI.G.BIJU,SC,TRAVANCORE DEVASWOM BOARD
R.SURAJ KUMAR
S.PREM ANAND
ANJANA R.S.
RESHMA K.RAJU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27.07.2022 THE COURT ON 25.10.2022, DELIVERED THE
FOLLOWING:

"C.R"**JUDGMENT****Anil K. Narendran, J.**

The petitioner, claiming to be a social activist, has filed this writ petition under Article 226 of the Constitution of India seeking a writ of mandamus commanding the State of Kerala to pay the pending dues of annuity since 2017 for the properties of Sree Padmanabhaswamy Temple, Thiruvananthapuram, which were vested with the Government under the provisions of the Kerala Land Reforms Act, 1963 or as per similar enactments, giving effect to the revision as directed in the judgment of this Court. The petitioner has also sought for a writ of mandamus commanding the State of Kerala to disburse the annuity, effecting revision thereof upwards by 25% every four years to meet the increase in the expenses due to inflation, with 12% per annum on delayed payment, within a time limit to be fixed by the Court.

2. On 09.12.2020, when this writ petition came up for consideration before the Division Bench of the Hon'ble the Chief Justice, Registry was directed to place the matter before the Division Bench dealing with Devaswom matters.

3. The petitioner has filed this writ petition with State of

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Kerala, Rep. by the Secretary, Parliamentary Affairs and Revenue (Devaswom) Department; State of Kerala, Rep. by the Principal Secretary, Revenue Department; State of Kerala, Rep. by the Chief Secretary; and Travancore Devaswom Board, Rep. by its Secretary as Respondents 1 to 4 in the party array.

4. The petitioner filed I.A.No.1 of 2021 seeking an order to delete respondent Nos.1, 2 and 4 from the party array. In the affidavit filed in support of that interlocutory application, it is stated that, since the petitioner is seeking direction against the 3rd respondent, respondents 1, 2 and 4 are not necessary parties and therefore, they may be deleted from the party array. By the order dated 02.11.2021, I.A.No.1 of 2021 was allowed and respondents 1, 2 and 4 were deleted from the party array, at the risk of the petitioner.

5. The petitioner has also filed I.A.No.2 of 2021 seeking an order to implead the Executive Officer, Sree Padmanabhaswamy Temple, as the additional 5th respondent. Since the description of the said respondent was not properly shown in the cause title of that interlocutory application, that application was dismissed, by the order dated 02.11.2021, and the Executive Officer, Sree Padmanabhaswamy Temple was *suo*

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motu impleaded as the additional 5th respondent.

6. On behalf of the 3rd respondent, counter affidavit dated 07.03.2022 has been sworn to by the Deputy Secretary, Revenue Department, wherein it is stated that the matter relating to payment of annuity is governed by the provisions under the Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971. Under Section 6(1) and (2) of the said Act, an amount of Rs.58,500/- has been sanctioned on annual basis. The annuity for the year 2019-20, though sanctioned, could not be paid due to Covid-19 lockdown, and the amount was surrendered on 10.05.2020. For disbursing the said amount, a request was made before the Secretary, Land Board, on 01.07.2021. The annuity payable till 2018-19 and that for the year 2020-21 has already been sanctioned and paid. The document marked as Ext.R3(a) is a copy of the communication dated 11.11.2021 of the District Collector, Thiruvananthapuram, addressed to the Secretary to Government, Revenue Department. In the counter affidavit filed on behalf of the 3rd respondent, it is stated that, the proposal to enhance the annuity payable to Sree Padmanabhaswamy Temple is under active consideration of the Government. In the year 2017, Bill No.51 was brought during 14th Kerala Legislative Assembly, in

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order to amend the Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971. The Bill could not be passed by the Assembly during the tenure of the 14th Kerala Legislative Assembly. That Bill lapsed under Article 196(5) of the Constitution of India, on the dissolution of the 14th Kerala Legislative Assembly. The process initiated for introducing a new Bill is in progress. The file, which was examined by the Finance Department, is under the active consideration of the State Government.

7. The additional 5th respondent Executive Officer, Sree Padmanabhaswamy Temple, has filed a counter affidavit dated 14.03.2022, wherein it is stated that annuity at the rate of Rs.58,500/- is being paid to Sree Padmanabhaswamy Temple in terms of Section 6(1) and (2) of the Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971, as evidenced by Ext.R5(a) proceedings dated 28.03.2019 of the District Collector, Thiruvananthapuram. Apart from the said amount, Sree Padmanabhaswamy Temple is receiving Rs.31,998.69, annually, since the year 1970-71, under the provisions of the Thiruppuvaram Payment (Abolition) Act, 1969, as evidenced by Ext.R5(b) receipt dated 18.04.2018 issued for 2017-18 by the then Executive Officer. Apart from the said amounts, the Temple

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is receiving Rs.20,00,000/- annually towards the contribution by the State Government, under sub-section (2) of Section 18 of the Travancore-Cochin Hindu Religious Institutions Act, 1950. The said contribution, which was Rs.6,00,000/- since the year 1950, has been enhanced to Rs.20,00,000/- since the year 2003-04. For enhancement of the annual contribution, Ext.R5(c) request dated 18.06.2020 and Ext.R5(d) request dated 19.06.2020 were submitted before the State Government. Any delay on the part of the State Government in allotting annuities would result in the temple administration facing difficulties in meeting the day-to-day expenses.

8. Heard the learned Counsel for the petitioner, the learned Senior Government Pleader for the State and also the learned Counsel for the additional 5th respondent Executive Officer.

9. The Senior Government Pleader, at the outset, contended that this writ petition is not maintainable for more than one reason. The petitioner has no *locus standi* to file this writ petition. The necessary party, namely, the Secretary to Government, Revenue Department, is not in the party array and hence the writ petition is bad for non-joinder of necessary party.

10. In paragraph 2 of the writ petition the petitioner has

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stated that she is a social activist, who has taken up multiple cases for preserving the cultural and architectural values of temples.

11. Clause (d) of Section 2 of the Travancore-Cochin Hindu Religious Institutions Act, 1950 defines 'person interested', in the case of temple, to include a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts thereat.

12. 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/shebaites/employees. It is the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

13. 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 religious and charitable institutions. The relevant principles under the Hindu law will show

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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.

14. 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 'parents 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]**.

15. In **Devi S. Menon v. State of Kerala and others [2021 (5) KHC 748]** a Division Bench of this Court, in which one among us (Anil K. Narendran, J) was a party, held that the deity being a perpetual minor, applying the doctrine of *parents patriae*, the High Court is having inherent jurisdiction to protect and safeguard the properties of the Temple from any kind of

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wrongful claims or misappropriation.

16. In view of the law laid down in the decisions referred to supra, it is the duty of this Court to protect and safeguard the interest and properties of religious and charitable institutions, in exercise of its inherent jurisdiction. The doctrine of *parens patriae* will apply in this Court exercising jurisdiction to protect and safeguard the interest and properties of religious and charitable institutions, which can even be exercised *suo motu*. Therefore, we find no force in the contention of the learned Senior Government Pleader on the *locus standi* of the petitioner, which is mainly on the lack of pleadings in the writ petition.

17. Another contention of the learned Senior Government Pleader was that the necessary party, namely, the Secretary to Government, Revenue Department is not made a party. Payment of annuity to Sree Padmanabhaswamy Temple is dealt with by Revenue Department. Without the Revenue Department in the party array, the *lis* cannot be adjudicated. Hence, this writ petition is bad for non-joinder of the necessary party.

18. As already noticed hereinbefore, the petitioner has filed this writ petition with State of Kerala, Rep. by the Secretary, Parliamentary Affairs and Revenue (Devaswom) Department;

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State of Kerala, Rep. by the Principal Secretary, Revenue Department; State of Kerala, Rep. by the Chief Secretary; and Travancore Devaswom Board, Rep. by its Secretary as Respondents 1 to 4 in the party array. The petitioner filed I.A.No.1 of 2021 seeking an order to delete respondent Nos.1, 2 and 4 from the party array, stating that the said respondents are not necessary parties. By the order dated 02.11.2021, I.A.No.1 of 2021 was allowed and respondents 1, 2 and 4 were deleted from the party array, at the risk of the petitioner.

19. Rule 148 of the Rules of the High Court of Kerala, 1971, deals with addition of parties. As per the said rule, all persons directly affected shall be made parties to the petition. Where such persons are numerous, one or more of them may with the permission of the Court on application made of the purpose be impleaded on behalf of or for the benefit of all persons so affected; but notice of the original petition shall, on admission, be given to all such persons either by personal service or by public advertisement as the Court in each case may direct.

20. In **Sobhana v. Panavally Grama Panchayat [2019 (4) KHC 450]** this Court noticed that, as per the first proviso to Rule 148 of the Rules of the High Court of Kerala, 1971, in cases

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where the State Government is a party the Secretary to the Government Department concerned shall be arrayed as party representing the Government. As per the second proviso, if the subject matter of the petition relates to two or more Government Departments or, if the petition is of such a nature, the disposal of which warrants information from two or more Government Departments, the Chief Secretary to Government and the Secretaries to those Government Departments shall be made as party representing the Government.

21. In the writ petition, the first relief sought for relates to non-payment of annuity to Sree Padmanabhaswamy Temple, since 2017, payable by the Revenue Department of the State. In view of the provisions under Rule 148 of the Rules of the High Court of Kerala, 1971, we find force in the contention of the learned Senior Government Pleader that the writ petition is bad for non-joinder of the necessary party, in so far as it relates to the first relief sought for.

22. The specific stand taken in the counter affidavit filed on behalf of the 3rd respondent is that, though, in terms of Section 6(1) and (2) of the Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971, the annuity of Rs.58,500/- was

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sanctioned to Sree Padmanabhaswamy Temple, for the year 2019-20, it could not be paid due to Covid-19 lockdown, and the said amount was surrendered on 10.05.2020. For disbursing the said amount, request was made before the Secretary, Land Board, on 01.07.2021. The annuity payable to Sree Padmanabhaswamy Temple till 2018-19 and also that for the year 2020-21 has already been sanctioned and paid, as evident from Ext.R3(a) communication dated 11.11.2021 of the District Collector, Thiruvananthapuram, addressed to the Secretary to Government, Revenue Department. On 26.05.2022, this Court recorded the submission made by the learned Senior Government Pleader that the annuity payable to Sree Padmanabhaswamy Temple up to 2020-21, at the existing rate, has already been paid. In the above circumstances, the petitioner has no subsisting grievance regarding payment of annuity, in terms of the provisions under Section 6(1) and (2) of the Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971, at the existing rate of Rs.58,500/-.

23. In the writ petition, the petitioner claims that the annuity to Sree Padmanabhaswamy Temple is being paid under the provisions of the Kerala Land Reforms Act, 1963. In view of the provisions Section 67A of the said Act, which was inserted in

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the year 2006, the State Government is obliged to effect periodical increase in the annuity payable to Sree Padmanabhaswamy Temple. But such an increase is not so far effectuated. In that premises, the petitioner seeks a direction for the increase in payment of the annuity to Sree Padmanabhaswamy Temple. The learned counsel for the petitioner contended that the State is not discharging its statutory obligation under Section 65 of the Kerala Land Reforms Act, which deals with special provisions relating to religious, charitable or educational institutions of a public nature; Section 67 of the said Act, which deals with payment of annuity to such institutions; and Section 67A of the said Act, which deals with revision of annuity.

24. The learned counsel for the petitioner contended that two lakh acres of land belonging to Sree Padmanabhaswamy Temple was vested with the Government by virtue of the provisions in the Kerala Land Reforms Act, 1963 and the Government is bound to pay annuity as provided in Section 67 of the said Act. It is pointed out that the annuity set apart in 1957 in the first budget of Kerala to be paid to the Travancore Devaswom Board was Rs.6,00,000/-, which comes to 0.21% of the State's total budget revenue. In 2006, Section 67A was inserted to the

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Kerala Land Reforms Act, which provides for increase of annuity, thrice the amount then existing, and thereafter at the expiration of every five years by 25%. The claim of the petitioner is that the annuity paid to Sree Padmanabhaswamy Temple is liable to be enhanced, as provided under Section 67A. The petitioner alleges that the Government failed in its statutory obligation to enhance the annuity, and the additional 5th respondent, the Executive Officer did not take any steps to get the annuity increased. In such circumstances, the petitioner, who claims to be interested in the affairs of the Temple, has approached this Court in this writ petition for getting direction in the matter of enhancement of annuity payable to Sree Padmanabhaswamy Temple.

25. Since the second relief sought for in this writ petition relates to a direction to the State Government to enhance the annuity presently being paid to Sree Padmanabhaswamy Temple, at the rate of Rs.58,500/-, it is required to consider whether the essential question involved in this writ petition relates to the need of an executive order or legislation.

26. Clause (54) of Section 2 of the Kerala Land Reforms Act, 1963 defines 'Sree Pandaravaka lands' as the land owned by Sree Padmanabhaswamy Temple. Clause (30) of Section 2 defines

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'landowner' as the owner of the land comprised in a holding which *inter alia* includes a landholder holding Sree Pandaravaka lands on pattam, otti, jenmam, kudijenmam, danam or any other similar tenure. It follows that the provisions of Section 72 of the said Act, pertaining to vesting of land with the Government, apply to Sree Pandaravaka lands also. Further, Section 65 of the said Act says that notwithstanding anything contained in Sections 53 to 64, where in respect of a holding the landowner or the intermediary is a religious, charitable or educational institution of a public nature, such institution may choose whether the right, title and interest of the institution in respect of the holding should be vested in the Government in consideration of the payment of an annuity in perpetuity by the Government or whether it should be paid such annuity by the Government instead of purchase price in case the holding is purchased by the cultivating tenant under the provisions of the Act. These provisions also indicate that the land owned by a religious institution of a public nature would also vest with the Government in consideration of payment of annuity.

27. The learned Senior Government Pleader for the State and also the learned counsel for the additional 5th respondent Executive Officer contended that payment of annuity to Sree

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Padmanabhaswamy Temple is governed by the provisions under Section 6(1) and (2) of the Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971 and not by the provisions under the Kerala Land Reforms Act, 1963.

28. The Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971 was enacted by the Legislature to provide for the enfranchisement of 'Sree Pandaravaka lands' held by landholders and for the vesting in the Government of certain 'Sree Pandaravaka Thanathu lands'. Clause (i) of Section 2 defines 'Sree Pandaravaka land' to mean any land owned by the Sree Padmanabhaswamy Temple and registered in the revenue records as 'Sree Pandaravaka'. Clause (j) of Section 2 defines 'Sree Pandaravaka Thanathu land' means land registered as 'Sree Pandaravaka Thanathu' in the revenue records and includes such land held on kuthakapattam. Clause (j) of Section 2 defines 'Temple' to mean the Sree Padmanabhaswamy Temple at Trivandrum.

29. Section 3 of the Act deals with extinguishment and vesting of certain rights of the Temple in all 'Sree Pandaravaka lands' held by landholders and also in all 'Sree Pandaravaka Thanathu lands', except those referred to in sub-section (2).

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Section 3 of the Act reads thus;

"Section 3: Extinguishment and vesting of certain rights of the Temple

(1) Notwithstanding anything contained in any law or contract or in any judgment, decree or order of court, with effect on and from the appointed day,-

(a) all rights, title and interest of the Temple in all Sree Pandaravaka lands held by landholders shall stand extinguished;

(b) All rights, title and interest of the Temple in all Sree Pandaravaka Thanathu lands, except those referred to in sub-section (2), shall vest in the Government;

(c) every building which immediately before the appointed day belonged to the Temple and was then being used as an office in connection with the administration of the Melkanganam branch of the Sree Pandaravaka Department and for no other purpose, shall vest absolutely in the Government free of all encumbrances.

Explanation.- For the purposes of this sub-section, "building" includes the site on which it stands and any land appurtenant thereto.

(2) Nothing contained in sub-section (1) shall apply to the lands specified in the Schedule.

(3) The Government may, on being satisfied that any Sree Pandaravaka Thanathu land is absolutely indispensable for the maintenance, upkeep and use of the Sree Padmanabha swamy Temple, or any temple attached thereto, direct, by notification in the Gazette, that the rights, title and interest in respect of such land shall cease to vest in the

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Government and thereupon such rights, title and interest shall re-vest in the Sree Padmanabhaswamy Temple.

(4) If any question arises as to whether any building falls or does not fall within the scope of sub-section (1), it shall be referred to the Government whose decision thereon shall be final and shall not be liable to be questioned in any court of law."

30. In view of the provisions under Section 4 of the Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, every landholder shall, subject to the provisions of Section 8, have full proprietary right in the land comprised in his holding, and such right shall be heritable and alienable. Section 5 of the said Act deals with treatment of Thanathu lands.

31. Section 6 of the Act deals with compensation to the temple. Section 6 of the Act reads thus;

"Section 6: Compensation to the Temple

(1) The Government shall by way of compensation for the extinguishment of the rights, title and interest of the Temple under clause (a) of sub-section (1) of section 3 and for the vesting in the Government of its rights, title and interest in Sree Pandaravaka Thanathu lands and of buildings under clauses (b) and (c) of that sub-section pay in perpetuity to the Temple every financial year beginning with the financial year in which the appointed day falls, an amount of fifty-eight thousand and five hundred rupees as annuity.

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(2) The annuity payable under sub-section (1) shall be paid in one lump every financial year on such date and in such manner as may be prescribed.”

(underline supplied)

32. Clause (a) of sub-section (1) of Section 6 of the Act deals with compensation on vesting of all Sree Pandaravaka lands held by landholders; clause (b) of sub-section (1) of Section 6 deals with compensation on vesting of all Sree Pandaravaka Thanathu lands, except those referred to in sub-section (2) and clause (c) of sub-section (1) of Section 6 deals with compensation on vesting of certain buildings referred to therein. As per sub-section (1) of Section 6, the Government shall by way of compensation for the extinguishment of the rights, title and interest of the Temple under clause (a) of sub-section (1) of Section 3 and for the vesting in the Government of its rights, title and interest in Sree Pandaravaka Thanathu lands and of buildings under clauses (b) and (c) of that sub-section pay in perpetuity to the Temple every financial year beginning with the financial year in which the appointed day falls, an amount of fifty-eight thousand and five hundred rupees as annuity. As per sub-section (2) of Section 6, the annuity payable under sub-section (1) shall be paid in one lump every financial year on such date and in such manner

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as may be prescribed.

33. Chapter III of the Travancore-Cochin Hindu Religious Institutions Act, 1950 deals with Sree Padmanabhaswamy Temple. Section 23 of the said Act provides that, until 'other arrangements' are made, the existing arrangements regarding the management of Sree Pandaravaga properties and the collection of revenues therefrom shall continue as heretofore. As per Section 22 of the Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971, the provisions under the said Act shall be deemed to be 'other arrangements' made regarding the management of Sree Pandaravaka properties within the meaning of Section 23 of the Travancore-Cochin Hindu Religious Institutions Act, 1950.

34. The objective of the Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, as contained in the Preamble, is to provide for the enfranchisement of Sree Pandaravaka lands held by land-holders and for the vesting in the Government of certain Sree Pandaravaka Thanathu lands. In order to make payment of annuity, when the right, title and interest of Sree Padmanabhaswamy Temple are extinguished by virtue of such vesting, a provision is made in Section 6 of the said Act, for payment of a fixed amount of Rs.58,500/- as annuity.

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35. Statement of objects and reasons of the Sree Pandaravaka Lands (Vesting And Enfranchisement) Act,1971 (Act 20 of 1971) reads thus:

The Sree Pandaravaka lands are lands owned by the Sree Padmanabha Swamy Temple at Trivandrum and held in trust by the former Maharaja of Travancore. These lands which lie scattered in the Trivandrum District consist of about 12,630 acres fetching an annual income of Rs.61,568 to the Temple.

2. In the interests of the holders of the Sree Paridaravaka lands, it is considered necessary to extinguish the rights of the Temple in these lands on payment of compensation to the Temple and to confer full proprietary rights on such holders. It is also considered that every landholder, the annual rent payable by whom in respect of all the lands comprised in his holding is more than the basic tax payable in respect of such lands, should be made liable to pay compensation equal to sixteen times the difference between the annual rent and the basic tax. It is proposed to give the Temple by way of compensation an annuity of Rs.58,500 in perpetuity.

3. The Sree Pandaravaka lands are not liable to basic tax at present. It is proposed to subject these lands to basic tax.

4. The Sree Pandaravaka lands (Vesting and Enfranchisement) Bill, 1968, which was intended to achieve the above objects, was introduced in the Legislative Assembly on the 10th January, 1969 and referred to a Select Committee. The report of the Select Committee on the Bill together with the Bill as amended by the Select Committee was presented to the Legislative Assembly on the 29th

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September, 1969. But, the Bill could not be proceeded with and passed before the dissolution of the Legislative Assembly.

5. The present Bill is on the lines of the Sree Pandaravaka Lands (Vesting and Enfranchisement) Bill, 1968, as amended by the Select Committee. (underline supplied)

36. Though the petitioner contended that the payment of annuity to Sree Padmanabhaswamy Temple is as per the provisions of the Kerala Land Reforms Act, 1963, no materials are produced or brought to our notice to show that the Government had paid annuity to the Temple in terms of the provisions of the said Act. On the other hand, the definite stand of the State and also the 5th respondent Executive Officer is that the annuity to Sree Padmanabhaswamy Temple is being paid as per the provisions under Section 6 of the Sree Pandaravaka Lands (Vesting and Enfranchisement) Act. Ext.R1(a) communication would show that in the year 2021 also an amount of Rs.58,500/-, as provided in Section 6 of the said Act, was paid to Sree Padmanabhaswamy Temple as annuity. That fact is not in dispute.

37. Can then the petitioner claim that the Government is obliged to pay annuity as per the provisions in the Kerala Land Reforms Act? If that contention is sustained, certainly the amount of annuity requires periodical revision as provided in Section 67A of the Kerala Land Reforms Act, 1963 and an executive order is

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enough to effectuate the enhancement.

38. The Kerala Land Reforms Act, 1963 deals with vesting of lands in occupation of every kind of landowner, as defined in clause (30) of Section 2 of the said Act. Sree Padmanabhaswamy Temple is one such owner and Sree Pandaravaka land is one such land. When the Kerala Land Reforms Act deals with vesting and also enfranchisement of the lands in general, the Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971 deals with the lands belonging to Sree Padmanabhaswamy Temple alone. When such a special statute is enacted for dealing with the land of a particular land owner, namely, Sree Padmanabhaswamy Temple, the provisions of the Sree Pandaravaka Lands (Vesting and Enfranchisement) Act being a special statute shall prevail over the provisions of the Kerala Land Reforms Act. The Sree Pandaravaka Lands (Vesting and Enfranchisement) Act is the latest statute as well.

39. The principles of law enunciated from the maxim '*generalia specialibus non derogant*' is adopted as a cardinal principle of interpretation and characterised, a well-recognised principle in law. The Apex Court in **Chandra Prakash Tiwari v. Shakuntala Shukla [(2002) 6 SCC 127]** held that it is well

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settled that in the event two conflicting provisions are operating in the same field, the doctrine of '*generalia specialibus non derogant*' shall apply. In **Commercial Tax Officer v. Binani Cements Ltd. [(2014) 8 SCC 319]** the Apex Court held that, it is well established that when a general law and a special law dealing with some aspect dealt with by the general law are in question, the rule adopted and applied is one of harmonious construction, whereby the general law, to the extent dealt with by the special law, is impliedly repealed. This principle finds its origins in the latin maxim of '*generalia specialibus non derogant*', i.e., general law yields to special law should they operate in the same field on the same subject.

40. Therefore, the petitioner cannot claim that the annuity to be paid to Sree Padmanabhaswamy Temple is as per the provisions of the Kerala Land Reforms Act, 1963 and not under the Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971. As per sub-section (1) of Section 6 of the said Act, the Government shall by way of compensation for the extinguishment of the rights, title and interest of the Temple under clause (a) of sub-section (1) of section 3 and for the vesting in the Government of its rights, title and interest in Sree Pandaravaka Thanathu lands and of

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buildings under clauses (b) and (c) of that sub-section pay in perpetuity to the Temple every financial year beginning with the financial year in which the appointed day falls, an amount of fifty-eight thousand and five hundred rupees as annuity. When, it is claimed that the annuity being paid under Section 6 of the Sree Pandaravaka Lands (Vesting and Enfranchisement) Act to Sree Padmanabhaswamy Temple requires revision, the same can be done only if Section 6 of the said Act is appropriately amended. When the Statute itself fixed the amount of annuity to be paid, no executive order for the enhancement is possible. Therefore, the matter in issue is whether the State of Kerala is to be directed to legislate a provision for enhancement of annuity to Sree Padmanabhaswamy Temple.

41. Here is a case where the petitioner highlighted the grievance that the annuity fixed in the year 1971 has not been enhanced hitherto. Considering the rate of inflation and such other aspects, it is the obligation of the Government to revise the annuity appropriately. Article 290A of the Constitution of India provides for payment of annuity towards Travancore Devaswom Fund from the Consolidated Fund of India meaning thereby the right of Devaswoms to get annuity is a Constitutional right. The grievance

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of denial by the Government to enhance the annuity that has been highlighted by the petitioner should be looked into in the aforementioned angle. When the statutory and Constitutional provisions command the Government to pay the annuity, it cannot be said that the petitioner has any oblique or extraneous motive in filing this Writ Petition. It certainly serves the larger public interest.

42. The above discussion follows that the annuity to be paid to Sree Padmanabhaswamy Temple is under Section 6 of the Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971 and any enhancement is possible only if the said statute is amended. In the counter affidavit filed on behalf of the 3rd respondent, it is pointed out that the proposal to enhance the annuity payable to Sree Padmanabhaswamy Temple is under the active consideration of the Government. In order to enhance the annuity payable to the Temple, in the year 2017, Bill No.51 was brought during 14th Kerala Legislative Assembly, to amend the Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971. The Bill could not be passed by the Assembly during the tenure of 14th Kerala Legislative Assembly. That Bill lapsed, under Article 196(5) of the Constitution of India, on the dissolution of 14th Kerala Legislative Assembly. The process initiated for introducing a new Bill is in

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progress. The file, which was examined by the Finance Department, is under active consideration of the State Government.

43. We are of the view that any such increase shall be taking into account the prevailing state of affairs, including the rate of inflation and change that has been brought about in the nature and complexity in the administration of Sree Padmanabhaswamy Temple over a period of time. All the same, it is a matter for legislation. This Court is not expected to direct the State to carry out a legislation in a particular manner.

44. In **Municipal Committee, Patiala v. Model Town Residents Association [(2007) 8 SCC 669]** the Apex Court held that it is so well settled and needs no restatement at our hands that the Legislature is supreme in its own sphere under the Constitution subject to the limitations provided for in the Constitution itself. It is for the Legislature to decide as to when and in what respect and of what subject matter the laws are to be made. It is for the Legislature to decide as to the nature of operation of the Statutes.

45. In **A.K. Roy v. Union of India [(1982) 1 SCC 271]**, it has been held that no mandamus can be issued to enforce an

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Act which has been passed by the Legislature. In **Union of India v. Prakash P. Hinduja [(2003) 6 SCC 195]** the Apex Court held that under our Constitutional scheme Parliament exercises sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In **Bal Ram Bali v. Union of India [(2007) 6 SCC 805]** the Apex Court considered the separation of powers and held that the Court cannot issue a direction to Parliament or to the State Legislature to enact a particular kind of law.

46. Viewed in the light of the law laid down in the aforesaid decisions, the relief claimed by the petitioner that the 3rd respondent State has to be directed to increase the annuity to be paid to Sree Padmanabhaswamy Temple by 25% every four years and to pay interest for the delayed payment, is not liable to be allowed.

The writ petition, therefore, fails and accordingly the same is dismissed. No order as to costs.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

APPENDIX OF WP(C) 27446/2020PETITIONER'S EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE INFORMATION FURNISHED BY THE EXECUTIVE OFFICER OF THE TEMPLE AFFAIRS OF SREE PADMANABHA SWAMY TEMPLE TO THE SECRETARY TO GOVT. OF KERALA, REVENUE (DEVASWOM) DEPARTMENT EMPHASIZING NON-PAYMENT OF DUES DATED 17.10.2017.
- EXHIBIT P2 TRUE COPY OF THE INFORMATION OBTAINED UNDER RTI REGARDING PAYMENT OF COMPENSATION TO SRI PADMANABHA SWAMY TEMPLE DATED 19.10.2017.
- EXHIBIT P3 TRUE COPY OF THE REPRESENTATION GIVEN BY THE KERALA CO-ORDINATOR OF NGO NAMED PEOPLE FOR DHARMA TO THE CHIEF MINISTER OF KERALA IN THIS REGARD OF REVISION OF THE ANNUITY DATED 28.09.2020.

RESPONDENTS' EXHIBITS

- Exhibit R3(a) TRUE COPY OF LETTER NO.B9-17542/2015 DATED 11.11.2021 FROM DISTRICT COLLECTOR, THIRUVANANTHAPURAM.
- Exhibit R5 (a) A TRUE COPY OF THE PROCEEDING NO B9-17542/2015
- Exhibit R5 (b) TRUE COPY OF THE RECEIPT EVIDENCING THE SAME DATED 18.04.2018 ISSUED BY THE THEN EXECUTIVE OFFICER OF THE TEMPLE FOR THE YEAR 2017-18.
- Exhibit R5 (c) A TRUE COPY OF THE REQUEST FOR SANCTION OF ENHANCED ANNUAL CONTRIBUTION OF RUPEES TWO CRORES FOR THE YEAR 2020-21 AND FOR THE RELEASE OF ANNUAL GOVERNMENT CONTRIBUTION OF RS.20,00,000/- FOR THE YEAR 2019-20
- Exhibit R5 (d) A TRUE COPY OF THE SIMILAR REQUEST DATED 19.6.2020 ADDRESSED TO THE PRIVATE SECRETARY TO MINISTER FOR CO-OPERATION (TOURISM AND DEVASWOM DEPARTMENT) GOVERNMENT OF KERALA