

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.SURENDRA MOHAN

MONDAY, THE 31ST JANUARY 2011 / 11TH MAGHA 1932

WP(C).No. 4256 of 2010(O)

CMA.103/2009 of D.C & SESSIONS COURT,TRIVANDRUM
OS.1831/2009 of PRL.M.C.,TRIVANDRUM
.....

PETITIONERS:

1. UTHRADAM THIRUNAL MARTHANDA VARMA,
PATTOM PALACE, THIRUVANANTHAPURAM.
2. SREE PADMANABHASWAMY TEMPLE,
REP. BY THE EXECUTIVE OFFICER,
SREE PADMANABHASWAMY TEMPLE, EAST FORT,
THIRUVANANTHAPURAM.

BY ADV. SRI.K.RAMACHANDRAN
SRI.S.SREEDEV

RESPONDENTS:

1. UNION OF INDIA,
REP. BY THE SECRETARY,
MINISTRY OF CULTURE, SASTHRI BHAVAN,
NEW DELHI.
2. STATE OF KERALA,
REP. BY THE CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM.
3. N.VISWAMBARAN, S/O.NARAYANAN,
RESIDING AT BEENA COTTAGE, BALARAMAPURAM,
THIRUVANANTHAPURAM.
4. R.PADMANABHAN, S/O.RAMA IYER,
AGED 44 YEARS, RESIDING AT WEST NADA,
FORT, THIRUVANANTHAPURAM.
5. G.GEETHAKUMARI,
GEETHA BHAVAN, MUNDELA, VELLANADU,
THIRUVANANTHAPURAM.

6. R.CHANDRANKUTTY,S/O.RAGHAVAN PILLAI,
GENERAL SECRETARY,"SREE PADMANABHA TEMPLE STAFF
ORGANIZATION,NORTH NADA,FORT,THIRUVANANTHAPURAM,
RESIDING AT T.C.NO.39/2158,'BINDU BHAVAN',
PADANNAVU LANE,MANACAUD P.O.,THIRUVANANTHAPURAM.

ADDL. RESPONDENT:

7. SREE PADMANABHA SWAMY TEMPLE EMPLOYEES' UNION,
REG. NO.01/31/97, FORT, THIRUVANANTHAPURAM-23,
REP. BY ITS GENERAL SECRETARY, SRI.P.RAJENDRA DAS.

(ADDL. 7TH RESPONDENT IS IMPLEADED AS PER ORDER
DT.3.11.2010 IN I.A. NO.15387/2010.)

ADV. SRI.T.P.M.IBRAHIM KHAN,ASST.S.G OF INDI FOR R1
GOVT. PLEADER SRI.LAKSHMI NARAYAN FOR R2
SRI.VAKKOM N.VIJAYAN FOR R3
SMT.V.RENJU FOR R3
SRI.P.ANIYAN FOR R3
SMT.M.A.RAMITHA FOR R3
SRI.M.BALAGOVINDAN FOR R4
SRI.T.K.ANANDA PADMANABHAN FOR R4
SRI.R.RAJASEKHARAN PILLAI FOR R5
SMT.SABINA JAYAN FOR R5
SRI.D.SOMASUNDARAM FOR R6
SRI.PIRAPPANCODE V.S.SUDHIR FOR ADDL.R7
SRI.JELSON J.EDAMPADAM FOR ADDL R 7

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04/11/2010, ALONG WITH WPC NO.36487 OF 2009, THE COURT
ON 31/01/2011 DELIVERED THE FOLLOWING:

APPENDIX (WPC NO.4256/2010)

PETITIONERS' EXHIBITS:

P1: TRUE COPY OF THE COVENANT.

P2: TRUE COPY OF PLAINT IN O.S. 625/2007 OF SUB COURT, TRIVANDRUM.

P3: TRUE COPY OF PLAINT IN O.S. 1618/2009 BEFORE THE 1ST ADDITIONAL MUNSIFF'S COURT, TRIVANDRUM.

P4: TRUE COPY OF MEMORANDUM OF APPEAL IN CMA 103/09 PENDING BEFORE THE DISTRICT COURT, TRIVANDRUM.

P5: TRUE COPY OF THE PLAINT IN O.S. NO.1831/2009 DT.28.10.2009 PENDING BEFORE THE MUNSIFF'S COURT, TRIVANDRUM.

P6: TRUE COPY OF WRITTEN STATEMENT SUBMITTED BY THE STATE IN O.S. NO.625/2007 BEFORE THE SUB COURT, TRIVANDRUM.

RESPONDENT'S EXHIBITS:

R4(a): TRUE COPY OF PLAINT IN O.S. 253/1976 OF THE PRINCIPAL SUB COURT, TRIVANDRUM.

R4(b): TRUE COPY OF WRITTEN STATEMENT FILED BY THE LATE CHITHIRA THIRUNAL BALARAMA VARMA.

R4(c): COPY OF THE LETTER NO.364/SPST DT.24.10.2008 ISSUED BY 2ND PETITIONER.

R4(d): TRUE COPIES OF THE VAZHIPADU RECEIPTS.

R4(e): TRUE COPY OF THE CIRCULAR DT.2.8.2007.

R4(f): TRUE COPY OF I.A. NO.605/2008.

R4(g): TRUE COPY OF THE LETTER DT.23.9.2007.

R4(h): TRUE COPY OF LETTER DT.29.9.2007.

R4(i): TRUE COPY OF INTERIM REPORT DT.23.11.2007.

R4(j): TRUE COPY OF APPLICATION MADE TO THE ADVOCATE COMMISSIONER.

R4(k): TRUE COPY OF LETTER DT.27.9.2008 CAUSED TO PETITIONERS.

R4(l): TRUE COPY OF NOTICE TO THE 2ND PETITIONER DT.20.10.2009.

R4(m): TRUE COPY OF REPLY DT.26.10.2009.

R5(a): COPY OF THE IMPRESSED PAYMENT ORDER.

R5(b): COPY OF THE IMPRESSED PAYMENT ORDER EVIDENCING PAYMENT OF WAGES OF APRIL 2007.

(WPC NO.4256/2010)

R5(c): COPY OF LETTER DT.6.5.2008.

R5(d): COPY OF LETTER DT.14.9.2009.

R5(e): COPY OF THE COMPLAINT DT.24.11.2009.

R5(f): COPY OF THE FIR DT.28.1.2010.

R6(a): TRUE COPY OF THE RELEVANT PAGES OF (THRIPADITHANAM) TRAVANCORE STATE MANUAL VOL.2 BY T.K.VELUPILLAI, PUBLISHED BY KERALA GAZETTE DEPARTMENT.

R6(b): TRUE COPY OF REGISTRATION CERTIFICATE NO.01/36/1987 DT.15.10.1987.

R6(c): TRUE COPY OF IMPEADING PETITION DT.26.9.2007.

R6(d): TRUE COPY OF JUDGMENT IN W.P.28245/2007 OF THIS HON'BLE COURT DT.2.7.2008.

R6(e): TRUE COPY OF I.A. FILED JAYASEKHARAN NAIR.

R6(f): TRUE COPY OF LETTER NO.75/SPST DT.16.9.2008.

R6(g): TRUE COPY OF ORDER DT.10.6.2009.

R6(h): TRUE COPY OF LETTER ISSUED BY ME TO THE PETITIONERS AND RESPONDENTS HEREIN DT.17.8.09.

R6(i): TRUE COPY OF THE SAID REPRESENTATION DT.22.12.2009.

R6(j): TRUE COPY OF LETTER DT.24.3.08 ISSUED BY THE THEN 2ND PETITIONER.

R6(k): TRUE COPY OF SAID APPLICATION DT.23.10.2009.

R6(l): TRUE COPY OF SAID REPLY NO.95/SPST DT.23.11.2009.

R6(m): TRUE COPY OF REPLY DT.1.1.2010.

R6(n): TRUE COPY OF COMPLAINT DT.24.2.2010.

R6(o): TRUE COPY OF RECEIPT EVIDENCING THE COMPLAINT DT.24.2.2010.

TRUE COPY

PS TO JUDGE

C.N.RAMACHANDRAN NAIR &
K.SURENDRA MOHAN, JJ.

.....
W.P.(C) Nos.36487 of 2009 & 4256 of 2010
.....

Dated this the 31st day of January, 2011.

JUDGMENT

Ramachandran Nair, J.

The central issue arising in these two connected W.P.(C)s is whether the younger brother of the last Ruler of Travancore could after the death of the last Ruler on 20.7.1991 claim to be the "Ruler of Travancore" within the meaning of that term contained in Section 18(2) of the Travancore-Cochin Hindu Religious Institutions Act, 1950 (hereinafter called "the TC Act") to claim ownership, control and management of the ancient and great Temple in Kerala namely, the Sree Padmanabha Swamy Temple located at Trivandrum.

2. Briefly stated, all the temples which were under the control and management of the erstwhile Princely States of Travancore and Cochin, after merger of the two Princely States went under the control of the Travancore and Cochin Devaswom Boards. However, under the Agreement of Accession signed between the two Princely States represented by the kings with the Government of India as a party,

which came into force with effect from 1.8.1949, the administration of the Sree Padmanabha Swamy Temple was "vested in trust" in the Ruler of Travancore. Travancore-Cochin became a Part B State under the Constitution until the State was reorganised in 1956 to form Kerala State. The TC Act was enacted after the commencement of the Constitution and in the said Act, the provisions of the Accession Agreement relating to Padmanabha Swami Temple were incorporated in Chapter III. It is by virtue of the Covenant in the Accession Agreement and later by operation of Section 18(2) of the TC Act, the management of the Sree Padmanabha Swamy Temple continued to be vested in Trust in the last Ruler of Travancore. By the Constitution (Twenty Sixth) Amendment Act, 1971, the privy purses, privileges and other special rights of the erstwhile Rulers of Indian States were abolished by deleting Articles 291 and 362 and by incorporating a new provision namely, Article 366(22) in the Constitution. Even though the Twenty Sixth Amendment to the Constitution was made effective from 28.12.1971, the challenge against the validity of the Amendment was repelled and the Amendment was upheld by the Supreme Court

vide judgment rendered by the Constitution Bench only on 4.2.1993 in RAGHUNATHRAO GANAPATRAO VS. UNION OF INDIA reported in 1994 Supp.(1) SCC 191. The last Ruler of Travancore died during pendency of the cases before the Supreme Court and until his death on 20.7.1991 he continued to manage the Sree Padmanabhaswamy Temple by virtue of powers conferred on him under Section 18(2) of the TC Act. Even though there is no "Ruler" in Travancore under the substituted definition of Article 366(22) after the death of the last Ruler and consequently the Ruler of Travancore referred to in Section 18(2) of the TC Act could be only the State, it allowed the management of the Padmanabha Swamy Temple to be taken over and retained by the brother of the last Ruler after the latter's death. The legality and propriety of the take over of control of the Great Temple by the brother of the deceased last Ruler and the future of the Temple are the issues to be decided herein.

3. Public resentment started when the last Ruler's brother, the first petitioner in W.P.(C) No.4256/2010, who after the last Ruler's death took over the control and management of the Temple, arranged to

take photographs of the treasures of the Temple and made a claim which was published in the Malayalam Daily "Kerala Koumudi" on 15.9.2007 stating that the treasures of the Padmanabha Swamy Temple are the family properties of the erstwhile Royal Family of Travancore. Several devotees approached Civil Courts in Trivandrum filing Suits for declaration and for injunction against those who are in control and management of the Temple and in one of the cases the Sub Court after hearing all the parties including the Temple Employees' Union which also opposes the present management, granted injunction against opening of treasure rooms (Kallaras) of the Temple. Even though an appeal filed against the injunction order is pending before the District Court, the injunction is said to be still in force. While so, the deceased last Ruler's brother with the Executive Officer of the Temple appointed by him also as a petitioner filed W.P.(C) No.4256/2010 before this Court essentially under Article 228 of the Constitution of India for calling for all the cases pending before the Subordinate Civil Courts and for declaring that the Civil Courts have no jurisdiction to decide the matter or in the alternative, to issue appropriate orders declaring the

entitlement of the petitioners to run the Temple. W.P.(C) No.36487/2009 is filed by an Advocate of the Supreme Court who is a devotee and a closeby resident of the Great Temple at Trivandrum, challenging the authority of the last Ruler's brother and the Executive Officer appointed by him to run the Temple and the main prayer in that W.P.(C) is for issue of a Writ of Quo Warranto against the Executive Officer, who according to the petitioner, was appointed by the last Ruler's brother without any authority whatsoever. We have heard Sri.M.Balagovindan, counsel appearing for the petitioner in W.P.(C) No.36487/2009, Sri.K.Ramachandran, counsel appearing for the last Ruler's brother, Senior Advocate Sri.S.V.Balakrishna Iyer appearing for the Executive Officer, the Government Pleader for the State which is also a party in these proceedings and also in the Suits pending before the lower Courts. Detailed argument notes are also filed by these parties. The Temple has over 200 permanent employees and the Temple Employees' Union is also impleaded as additional respondent in both the W.P.(C)s. The Union is supporting the case of the petitioner in W.P.(C) No.36487/2009 and they also contend that after

the death of the last Ruler of Travancore, first petitioner in W.P.(C) No.4256/2010 has no legal right to claim the control or management of the Temple. The Employees' Union has also raised an allegation that the Temple is mismanaged. An additional respondent impleaded in W.P.(C) No.36487/2009 (I.A. No.15415/2010) supported the case of the other respondents by attributing motives on the petitioner. We have heard Senior Advocate Sri.K.Ramakumar appearing for the said respondent.

4. Before proceeding to consider the legal issues raised and the jurisdiction of the lower courts and that of this Court which are also issues raised before us based on Article 363 of the Constitution, we have to briefly state the history of the Sree Padmanabha Swamy Temple. Even though the origin of the Temple is shrouded in antiquity and different versions are stated by different Authors, the modern history of this Great Temple starts with Anizham Thirunal Marthandavarma who established the modern Travancore State which was previously known as Venad. For over 200 years prior to the re-establishment of the Princely State and taking over of management of

the Temple and the State by Marthandavarma, the Temple was under the control of "Ettarayogam" (group of eight and a half) consisting of seven Pottis (Brahmins), one Nair chieftain and the King who had only half a vote, whereas all others had one vote each. While the committee of Potties controlled the Temple, the properties of the Temple were managed by Ettuveetil Pillamars, the 8 Nair chieftains belonging to eight big families spread over in different villages of the State. The King was a low key functionary in the Committee managing the Temple and he had only a very limited authority with half a vote. History proves that the Temple even remained closed for five years on account of dispute between the King and the Potties and for over two centuries prior to Marthandavarma's Rule, the Brahmins constituting the Ettarayogam and the Nair chieftains virtually ruled the Temple and even in matters of the State, the King's authority steadily eroded making him thoroughly ineffective. In fact the Kings used to be even fined by the Ettarayogam Potties who were in control of the management of the Temple, if they considered the King's interference or involvement in the management of the Temple was excessive or

unwanted. The Ettuveetil Pillamars with the help of Brahmins in management of the Temple plotted against Marthandavarma becoming the King and they tried to instal the previous King's son as the new King in deviation of the practice of the nephew of the King namely, Marthandavarma becoming the King. However, in the protracted battle that followed between the heir to the throne namely, Marthandavarma and his loyalists on the one side and the Ettuveetil Pillamars, the Brahmins, and the King's son's loyalists on the other side, Marthandavarma succeeded and he executed all the Ettuveetil Pillamars, razed their houses to the ground and distributed their females to the fishermen. The Potties who were in charge of the Temple were also ousted from the management of the Temple, and most of them were banished and sent out of the State. Marthandavarma took over full control of the State and the Padmanabha Swamy Temple and it is he who reconstructed the Temple which was in bad shape after a major fire that took place years back and installed a new idol. In fact, the King surrendered his Kingdom to the presiding Deity namely, Padmanabha Swamy and declared himself the Dasa or servant of the

Lord and assumed the name "Padmanabhadasa". Marthandavarma ruled Travancore from 1729 to 1758 and after him also the Temple continued to be under the direct management and control of the King. While the Great Sree Padmanabhaswamy Temple was directly under the control of the Travancore King, all the major temples in Travancore were under private ownerships. Every temple had large extent of properties, but all such properties were in the hands of tenants who were not properly paying rent or revenue. During the reign of Travancore by the two Ranis successively namely, Gouri Lakshmi Bhai (1810-15) and Gouri Parvathy Bhai (1815-29), Colonel Monroe was the British resident in Travancore. He virtually usurped the powers of the Diwan and the weak Ranis were not able to resist him. Colonel Monroe found that the only way to augment the revenue of Travancore State is to bring the entire temples under the State's control and in turn, restore the properties that belong to the temples to the control of the State. It is under his advice Gouri Lakshmi Bhai issued the Proclamation on 17.9.1811 whereby all the major Hindu temples in Travancore were brought under the King. Thereafter the temple

properties were also restored to the State and the temples and the lands were brought under the Land Revenue Department. This resulted in improved collection of revenue from the lands and there was considerable augmentation and stability of the State finances. In fact, vast extent of properties of the Sree Padmanabhaswamy Temple were also restored to it and the financial position of this temple also improved. The temple had such surplus that in the 19th century for the needs of the State, Travancore Kings used to steadily borrow funds from the Sree Padmanabhaswamy Temple on repayment basis and the loans were repaid with interest. Ever since the major temples and their lands were brought under the control of the Queen through the Proclamation above referred issued in September 1811, the arrangement continued until the taking over of the Government temples by the Travancore Devaswom Board under the TC Act of 1950. The only change that happened in between was during the rule of Sree Moolam Thirunal Ramavarma who handed over the temples and the properties from Revenue Department of the State to the Devaswom Department of the Government, from which it was taken over by the

Travancore Devaswom Board on its constitution. From the history of the temples in Travancore which we have taken from the book written by Dr.R.Madhu Devan Nair and published by the Travancore Devaswom Board, what is clear is that for over one and a half centuries the temples were under the Government Departments and thereafter under the Devaswom Board constituted under the TC Act. So far as the Sree Padmanabhaswamy Temple is concerned, the only difference is that the temple was under the direct control of the Travancore King. However, this temple was also treated as a State/public temple and was never regarded as private property of the Travancore King or as his family property. The system of the Travancore King running the Temple continued during the period of the last Ruler who was the King from 1931 to 1949 when the Agreement of Accession was signed integrating the Princely States of Travancore and Cochin as one and bringing the Travancore-Cochin as Part B State under the Constitution. Government of India was also a signatory to the Agreement of Accession signed between the Kings of Travancore and Cochin constituting the Travancore Cochin State. An

authentic statement about the history, status and position of this Temple available in the book "Integration of Indian States" written by Sri.V.P.Menon who played an important role in the integration of Indian States and who represented Union Government as a signatory to the Travancore-Cochin Accession Agreement, is as follows (page 283):

"Travancore had been ruled by an unbroken line of Hindu Kings from the earliest times and had retained throughout the centuries its essential character of a Hindu State. The most important temple in the State has always been, and still is, the Sree Padmanabha Temple richly endowed and possessing very extensive landed properties. These were originally managed by a Yogam of eight hereditary trustees and the ruler, but at the beginning of the eighteenth century the Yogam was ousted and the administration of the temple together with its properties was taken over entirely by the ruler and the temple properties became inter mixed with the property of the State. The State continued however to contribute to the maintenance of the Temple and the religious ceremonies. This state of affairs continued until the time of the integration of the two States." (emphasis supplied)

Even though all the temples under the control of the Princely States were brought under the control of the two Devaswom Boards of Travancore and Cochin, and State funds were also provided to the Devaswom Boards to supplement the resources of the temples, the Travancore King wanted to retain control of the Sree

Padmanabhaswamy Temple. Article VIII(b) of the Covenant is as follows:

"The administration of Sri.Padmanabhaswamy Temple, the Sree Pandaravaga properties and all other properties and funds of the said temple now vested in trust in the Ruler of the covenanting State of Travancore and the sum of Rs.1 lakh transferred from year to year under the provisions of clause (a) of this article and the sum of five lakhs of Rupees contributed from year to year towards the expenditure in the Sree Padmanabhaswamy Temple under sub-clause (c) of this article, shall, with effect from the first day of August 1949, be conducted, subject to the control and supervision of the Ruler of Travancore, by an Executive Officer appointed by him. There shall be a Committee known by the name of the Sree Padmanabhaswamy Temple Committee composed of three Hindu Members, to be nominated by the Ruler of Travancore to advise him in the discharge of his functions. Suits by or against the Sree Padmanabhaswamy Temple or in respect of its properties shall be instituted in the name of the said Executive Officer." (emphasis supplied)

In fact, after the commencement of the Constitution, the TC Act was enacted, which specifically incorporates the above provision in the Covenant vesting the management of the Temple with the Ruler of Travancore. Section 18 of the TC Act vesting in Trust the management of Sree Padmanabhaswamy Temple with the Ruler of Travancore is as under:

"18. Administration by Executive Officer:- (1) Out of the amount of forty-six lakhs and fifty thousand rupees

provided for payment of the Devaswom Fund in Article 290-A of the Constitution of India, a contribution of six lakhs of rupees shall be made annually towards the expenditure in the Sree Padmanabhaswamy Temple.

(2) The administration of the Sree Padmanabhaswamy Temple, the Sree Pandaravaga properties and all other properties and funds of the said temple vested in trust in the Ruler of Travancore and the sum of six lakhs of rupees mentioned in sub-section (1) shall be conducted, subject to the control and supervision of the Ruler of Travancore, by an Executive Officer appointed by him." (emphasis supplied)

5. It is the admitted position and the petitioners in W.P.(C) No.4256/2010 who are presently in control of the Temple, do agree that the provisions contained in the Covenant are incorporated in the TC Act and so much so, rights, if any they have over the Temple, have to be derived from the statutory provisions. The sole question, therefore, to be considered is whether the "Ruler of Travancore" under sub-section (2) above would take in the brother of the last Ruler of Travancore who died on 20.7.1991 namely, the first petitioner in WPC No.4256/2010 and after his death, the successive senior members of the Royal Family that ruled the Princely State of Travancore as claimed by him. The claim of the last Ruler's brother therefore is that the Great Temple will be perpetually under the control of his family. Since

"Ruler" is not defined in the TC Act, and since this is a post-Constitution Act, we have to necessarily refer to the definition of Ruler as substituted in Article 366(22) of the Constitution with effect from 28.12.1971 which is as follows:

"Ruler" means the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler."

Admittedly the Ruler of Travancore i.e. the late Sri.Chithira Thirunal Balarama Varama who ruled Travancore as King for 18 years (1931 to 1949) and who was the Rajapramukh of Travancore-Cochin for six years thereafter and who managed the Padmanabhaswamy Temple until his death on 20.7.1991, never claimed that the Sree Padmanabhaswamy Temple was the family Temple of the Royal Family or as individual property of himself. In fact, he succeeded in a Suit filed by one of the family members during his life time seeking partition of the assets of the Royal Family as properties of the joint family. The last Ruler's contention that he was not a Karanavan of the family and the Royal

Family was not a joint family were accepted at all levels of litigation including the Supreme Court. Even though the last Ruler executed a detailed Will bequeathing his personal properties, he had not included the Sree Padmanabhaswamy Temple as his personal property or dealt with the same in the Will. Admittedly the Great Temple was although in history recognised as a public Temple run with its own income, contributions from the State and offerings from devotees. The King ruled the State and managed the temple as a State temple and he was also a traditional participant in the rituals and ceremonies of the temple; mainly in the Arattu festival. Both in the Covenant namely Article VIII(b) of the Accession Agreement and in Section 18(2) of the TC Act what is stated is that the "Temple is vested **in trust** in the Ruler of Travancore". Obviously if Temple was the family property of the Royal Family or the private property of the King, then there was no need for specific provision in the Accession Agreement or in the TC Act providing for vesting of the Temple in trust in the hands of the last Ruler of Travancore. The conspicuous word used to qualify vesting is "in trust" which means that it is for the benefit of somebody. The

beneficiaries obviously are the devotees, the State and the public at large and all those who have an interest in the Temple. So much so, we have to necessarily conclude that the last Ruler was only a trustee who has retained the control of the Temple for the benefit of the devotees, the State and the public at large. Section 18(1) of the TC Act which provides for continuous funding of the temple by the State Government at the rate of Rs.6 lakhs annually clearly establish that this is a public temple, though during the life of the last Ruler, he was allowed to manage the same. In this context the term "Ruler" used in the Covenant of Accession Agreement and in Section 18(2) of the TC Act probably has only a literal meaning to describe Sree Chithira Thirunal Balarama Varma who was the last Ruler of Travancore and the signatory to the Accession Agreement. If at all "Ruler" has a technical meaning, certainly in the absence of a definition in the TC Act which was enacted after the Constitution came into force, the definition contained in the Constitution namely, Article 366(22) has to be adopted. Obviously the first petitioner in W.P.(C) No.4256/2010 or his successors of the Royal Family will not come within the description

of "Ruler" as defined under Article 366(22) of the Constitution and the only person who answers the definition is the last Ruler and after him no one can acquire that status which is not heritable. So much so, we hold that neither the said petitioner nor any of the successors of his family can claim control or management of the Temple under Section 18(2) of the TC Act after the death of the last Ruler.

6. The contention of petitioners in W.P.(C) 4256/2010 is that the Ruler referred to in Section 18(2) of the TC Act is a permanent concept and that takes in the senior members of successive generations of the Royal Family of Travancore i.e. the last Ruler's family. They have also raised a contention that the last Ruler derived the right over the Temple under the Covenant of Accession which is produced as Ext.P1 in their W.P.(C) and by virtue of Article 363 of the Constitution, no dispute arising under the Agreement could be settled in any court of law. So far as the contention of the first petitioner in W.P.(C) No.4256/2010 that Article 363 bars the jurisdiction of courts including the High Courts and Supreme Court with regard to dispute arising under agreement executed by Rulers of Princely States of India, we have

based on the Constitution Bench decision aboveresferred and in view of the specific provisions of Chapter III contained in the TC Act and going by the contention of first petitioner in W.P.(C) No.4256/2010 itself, found that the claim of the said petitioner or any of his family members over the Temple have to be found not under the provisions of Covenant of Accession Agreement, but under the provisions of Section 18(2) of the TC Act and Article 366(22) of the Constitution. Since we are considering the rights, if any, of the first petitioner in W.P.(C) No.4256/2010 based on the provisions of the Constitution and the provisions of Chapter III of the TC Act, Article 363 of the Constitution does not stand in our way and this court has full and complete jurisdiction to decide all matters arising in these two W.P.(C)s., which, though are interparty cases, are essentially in the nature of public interest litigations, wherein this court is called upon to decide the claim of an individual over a Great Temple against the claim of the devotees, public and the State as a whole on the other side. The counsel appearing for the petitioner in W.P.(C) No.36487/2009 contended that "Ruler" as such is not defined in the TC Act and the Ruler of

Travancore referred to in Section 18(2) of the TC Act is the last Ruler who was Sree Chithira Thirunal Balarama Varma who died on 20.7.1991. According to the said petitioner, after the death of the last Ruler, the Ruler of Travancore is the present Ruler of the State which is the State Government as such and so much so, on death of the last Ruler, the Government was bound to take over the Temple and manage the same by constituting Devaswom Board or other Trust or Authority similar to the Guruvayur or the Koodalmanikyam Devaswoms or the like. The petitioner has relied on the Constitution Bench decision of the Supreme Court referred above, which upheld the Twenty Sixth Amendment to the Constitution which in our view is very significant because of the new definition of "Ruler" introduced in Article 366(22) and the abolition of all the privileges and personal rights of the erstwhile Rulers. In the decision the Supreme Court has held as follows:

"74. As we have indicated above there were multiple sequence of events in the historical evolution which necessitated the Indian Rulers to enter into various agreements and ultimately to agree for integration of their States with the Dominion of India by dissolving the separate identity of their States and surrendering their sovereignty but reserving only

their rights for privy purses and privileges. Though India was geographically regarded as one entity it was divided in as many as about 554 segments -- big and small. On 15th August 1947 the British paramountcy lapsed and India attained its independence. The fact that a heavy price was paid to attain independence and freedom which are sanctified by the blood of many martyrs is unquestionable. During the independence struggle there was popular urge in the Indian States for attaining the freedom which unleashed strong movements for merger and integration of the States with the Dominion of India.

75. The agreements entered into by the Rulers of the States with the Government of India were simple documents relating to the accession and the integration and the "assurances and guarantees" given under those documents were only for the fixation of the privy purses and the recognition of the privileges. The guarantees and the assurances given under the Constitution were independent of those documents. After the advent of the Constitution, the Rulers enjoyed their right to privy purses, private properties and privileges only by the force of the Constitution and in other respects they were only ordinary citizens of India like any other citizen, of course, this is an accident of history and with the concurrence of the Indian people in their Constituent Assembly."

What is clear from the above is that after the commencement of the Constitution, the agreements which the erstwhile Rulers executed, have ceased to be in force and their powers, privileges etc. emanate from the provisions of the Constitution. In this case it is the case of the petitioners in W.P.(C) No.4256/2010 itself that the provision of the Covenant regarding the vesting of management of the

Padmanabhaswamy Temple in Trust in the last Ruler of Travancore in the Accession Agreement is incorporated in Section 18(2) and so much so, the last Ruler managed the Temple not by virtue of the provision in the Covenant, but by virtue of the statutory provision contained in Chapter III of the TC Act. In fact, during the period of management of the Temple by the last Ruler, the entire contributions payable by the State was paid to the Temple and there is no dispute on that. The feeble contention raised by the petitioners in W.P.(C) No.4256/2010 that the Sree Padmanabhaswamy Temple is a family temple of the Royal Family of Travancore can only be styled as absurd because in several judgments of this court this Great Temple is recognised as a "public temple" and in fact, it was the most famous Temple in the erstwhile Princely State of Travancore. In fact, a Division Bench of this court vide judgment in O.P. No.18309/2000 (produced as Ext.P1 in W.P.(C) No.36487/2009) categorically held that Sree Padmanabhaswamy Temple is a public temple which is one of the Mahakshetra of the Hindus and if there is any complaint by any worshiper of the Temple, that will be considered by this court and the

court will try to do justice. The claim of the first petitioner in W.P.(C) No.4256/2010 that he became the Ruler of Travancore on the death of the last Ruler has no basis at all after the Twenty Sixth Amendment to the Constitution. We have already found above that the successors of the last Ruler including the first petitioner in WPC No.4256/2010 does not fall within the definition of "Ruler" under Article 366(22) of the Constitution. In fact, after the Twenty Sixth Amendment of 1971, the President of India also ceases to have authority to recognise any person as the Ruler of Indian State or a successor of such Ruler. So much so, in our view, the contention of the first petitioner in W.P.(C) No.4256/2010 that he being brother of the last Ruler becomes the Ruler of Travancore after the death of the last Ruler, is only absurd. In other words, on the death of any person who remained recognised by the President as Ruler prior to the commencement of the Constitution will not have any successor in the capacity as Ruler of the State. What Article 366(22) seeks to achieve is to abolish the status of Ruler and under this definition clause, no one can acquire the status of Ruler after the commencement of the Constitution much less through succession.

In short "Ruler" is not a status that could be acquired through succession. Therefore, after death of the last Ruler on 20.7.1991, there is no Ruler in the erstwhile State of Travancore. So much so, we hold that the first petitioner in W.P.(C) No.4256/2010 who is the 5th respondent in the connected W.P.(C), cannot step into the shoes of the last Ruler to claim management of the Sree Padmanabhaswamy Temple by relying on the powers conferred under Section 18(2) of the TC Act.

7. The next question to be considered is the relief that both the parties have prayed for in the W.P.(C)s. So far as W.P.(C) No.4256/2010 is concerned which is filed under Article 228 of the Constitution, we feel in view of our findings above, all the Civil Suits and C.M.A. pending before the Civil Courts including the District Court in Trivandrum, have become infructuous and should be closed as such because the issue raised in every case is essentially one and the same which is about the right of ownership, management and control of the Temple claimed by the first petitioner in W.P.(C) No.4256/2010 which we have found against him. However, if any other issue is raised in any of the Suits to be decided between the parties, the Courts

are free to proceed to decide the matter consistent with the findings in this judgment. Since the first petitioner in the said W.P.(C) does not have any legal right to continue to manage the Temple, we have to necessarily hold that he has no authority to appoint an Executive Officer. However, we do not think there is any need to consider the issue of a writ of quo warranto because what has happened i.e. taking over control and management of the Temple after the death of the last Ruler by his brother until now, has happened, though without any legal authority, and the same is irreversible.

8. We have to, therefore, proceed to consider what should be done to save the Temple and to protect the interest of the devotees and the public at large who have great faith in this Great Temple which is also recognised as a structure of Archeological importance by the 6th respondent in W.P.(C) No.36487/2009. In this context it is worthwhile to refer to the decision of the Supreme Court in 2007(7) SCC 482 where in the Supreme Court has held as follows:

"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 "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."

Since the deity is a perpetual minor in the eye of law, the court has jurisdiction to protect it and this court has in the judgment in O.P. No.18309/2000 held that Sree Padmanabhaswamy Temple being a public temple this court has jurisdiction as parent patriae. All public temples in the erstwhile State of Travancore are now managed by the Travancore Devaswom Board under the TC Act. Government is also funding temples in terms of provisions contained in Article 290-A of the Constitution. In fact, substantial amount of contribution is paid by the Government under the provisions of the TC Act to the Devaswom Board and to the Sree Padmanabhaswamy Temple separately. After the death of the last Ruler of Travancore, the present Ruler happens to be the State Government and so much so, by operation of Section 18(2)

of the TC Act, the temple on death of the last Ruler reverts back to the State for administration by it. Obviously the State being secular cannot run a temple and so much so, it is for them to constitute a trust or statutory body like the Guruvayur Devaswom to administer the Sree Padmanabhaswamy Temple. The stand taken by the Government before the Civil Court and before us is that Government has no role in the matter and like other private temples run in the State, Sree Padmanabhaswamy Temple is also run by an individual with the help of Executive Officer and Advisory Board constituted by them. Government obviously has not answered the query raised by the court as to whether the present management has legal authority to run the Temple and if not, what is the step to be taken by the Government to arrange for management of the Temple. According to the Government, the Temple is fairly well run and there is no need for the Government to interfere in the matter. We do not think the approach of the Government is fair, reasonable or legal. We have concluded above that the provision in Chapter III of the TC Act was only to give effect to the provision in the Accession Agreement whereby the Ruler of

Travancore wanted to retain control of the Sree Padmanabhaswamy Temple during his life time. In the absence of any provision in the Covenant or in the TC Act to vest the Temple in the next senior member of the Royal Family after the death of the Ruler of Travancore, the Temple and its properties and assets will revert back and vest in the State Government under Articles 295 or 296 of the Constitution. Obviously if separate provision was not made in the Covenant and later by incorporation of the same in Chapter III of the TC Act vesting this Great Temple in trust in the Ruler of Travancore, it would have gone under the management of the Travancore Devaswom Board or probably a separate authority would have been created by the Travancore-Cochin Government to run the Temple. When there is no provision in the TC Act for succession of management from the Ruler of Travancore on death of the Ruler, the provisions of law will take over the situation. We have already found that under the definition clause in the Constitution (Article 366(22)), neither the first petitioner in W.P.(C) No.4256/2010 nor any of the members of the Royal Family which ruled Travancore prior to integration, answers the description of "Ruler" and

so much so, relatives of the late King have no right over the Temple. So much so, in the literal sense and by virtue of the operation of Articles 295 and 296 of the Constitution, the Temple vests in State Government through succession or escheat or atleast as the present Ruler of the State. Therefore, Government necessarily have to make arrangement for creation of authority, statutory or otherwise, to take over management and for running the Temple. In our view, the opinion of the State about private temples in the State, conveyed to us in court by the Government Pleader, itself is not going to advance any public interest. Ever so many private temples have assumed great importance and have accumulated wealth which is nothing but contribution from the devotees and public. Wherever public money is collected by temples and religious institutions, we feel Government has a duty to ensure that such public institutions are accountable to the devotees. We feel it is high time regulatory measures are made in the State to prevent plundering of the public money in the name of God and faith. Public money collected in trust for the Diety or for religious institutions, should never be allowed to be diverted for personal gains

and if it is permitted, the same amounts to permission to carry on business in faith or in the name of God. The question is whether the Government should allow religion and faith to be made a business activity by private individuals or trusts. We are constrained to observe that the attitude of the Government in this matter is not helpful to the interest of the State or to the devotees or to the public at large. We have already noticed that besides being a Hindu Temple, where people ardently worship, the Sree Padmanabhaswamy Temple is a building of great architectural value and its treasures are worth-preserving, protected and exhibited for the public to view the same. The operation of Section 18(2) of the TC Act after the death of the last Ruler of Travancore should not lead to any orphanage for the temple as we have already found that neither the first petitioner in W.P.(C) No.4256/2010 nor any of his family members get any right in management or control of the Sree Padmanabhaswamy Temple. So much so, Government being the successor to the assets and institutions of the erstwhile Princely State of Travancore, it is the duty of the Government to make arrangement in the same way once State-run

temples were handed over to Devaswom Boards.

9. It is a well known fact that the Temple has immense treasures, some of which are centuries old and are highly valuable by virtue of its antique value and its price in terms of the value of precious metals like gold, silver and stones used in the making. Even though we directed the present management to produce the inventory prepared by the last Ruler, about which there is a mention in the book written by the previous Ruler's niece namely, Smt. Gouri Lakshmi Bai, they refused to produce the same. Some registers produced in the Court were thoroughly incomplete and unreliable. In view of the public claim made by the last Ruler's brother who is presently managing the Temple that the treasures belong to the Royal Family of Travancore, the injunction granted by the Sub Court against opening any of the Kallaras (storage place in the Temple) and removal of any valuable item, should continue in force and we order so. However, the management is free to use such of the items which are required for the regular rituals and ceremonies in the Temple. In our view, there is no purpose in keeping the treasures of the temple acquired by it in the

course of several centuries as a mystery and if all the storage rooms (Kallaras) are opened and the treasures are exhibited in a Museum to be set up in the Temple compound, the glory of the Temple and the State will get a boost and probably the Great Temple will become a major tourist attraction and income earner. The authority constituted by the Government should also verify the inventories previously prepared and check whether any item is lost from the custody of the Temple and if so, proceed to identify the persons who have taken away the same and take steps to restore it to the Temple.

In view of the above findings, we dispose of the W.P.(C)s with the following directions:

i) There shall be a direction to the State Government to immediately take steps to constitute a body corporate or trust or other legal authority to take over control of the Sree Padmanabhaswamy Temple, its assets and management and to run the same in accordance with all the traditions hitherto followed. This shall be done within a period of three months from now.

ii) There will be an order of injunction against petitioners in W.P.

(C) No.4256/2010 who are respondents 3 and 5 in the other W.P.(C) against opening of any of the Kallaras or removing any of the articles from the Temple. However, they are free to use such of the articles required for rituals, ceremonies and regular poojas in the Temple until Temple is taken over by the Authority as stated above.

iii) There will be direction to the authority constituted by the Government to open all Kallaras, make inventory of the entire articles and create a Museum and exhibit all the treasures of the Temple for the public, devotees and the tourists to view the same which could be arranged on payment basis in the Temple premises itself. The first petitioner in W.P.(C) No.4256/2010 and the successors from the Royal Family should be permitted to participate in the rituals in the Temple like the Arattu Procession, which is symbolic of the presence of the "Padmanabhadasa" in the Festival.

iv) Considering the valuables and the treasures in the Temple, the Government should consider handing over security of the Temple to a team of Police or atleast provide Police assistance to the Temple security staff.

The Government should ensure that the opening of Kallaras (storage places) and the preparation of inventory are done by a team of responsible and honest officers either from the Government or from the authority constituted to manage the Temple in terms of the directions above so that there should not be any allegation of pilferage or manipulation. Inventory should be prepared in the presence of the petitioners in W.P.(C) No.4256/2010 or their agents towards proof of the items taken over from their custody.

C.N.RAMACHANDRAN NAIR
Judge

K.SURENDRA MOHAN
Judge

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