REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/CIVIL ORIGINAL/INHERENT JURISDICTION

CIVIL APPEAL NO.2732 OF 2020
[Arising Out of Special Leave Petition (C) No.11295 of 2011]

SRI MARTHANDA VARMA (D) THR. LRs. & ANR. …Appellants

VERSUS

STATE OF KERALA & ORS. …Respondents

WITH

CIVIL APPEAL NO. 2733 OF 2020
[Arising Out of Special Leave Petition (C) No.12361 of 2011]

AND

WRIT PETITION(C) No.518 OF 2011

AND

CONMT. PET.(C) No.493 OF 2019 IN SLP(C) No.12361 OF 2011

J U D G M E N T

Uday Umesh Lalit, J.

1. Leave granted in Special Leave Petition (Civil) No.11295 of 2011 and Special Leave Petition (Civil) No.12361 of 2011.

2. Sree Chithira Thirunal Balarama Varma who as Ruler of Covenanting State of Travancore had entered into a Covenant in May 1949 with the Government of India leading to the formation of the United State of Travancore and Cochin, died on 19.07.1991. His younger brother Uthradam Thirunal Marthanda Varma and the Executive Officer of Sri Padmanabhaswamy Temple, Thiruvananthapuram (hereinafter referred to as 'the Temple') as appellants 1 and 2 respectively have filed these appeals challenging the judgment and order dated 31.01.2011 passed by the High Court[1] in Writ Petition (Civil) No.36487 of 2009 and in Writ Petition (Civil) No.4256 of 2010.

A) Writ Petition (C) No.36487 of 2009 was filed by one T.P. Sundara Rajan, a practising Advocate praying that the High Court be pleased

[1] The High Court of Kerala at Ernakulum

to issue a Writ of Quo Warranto directing the appellant No.2 herein to show the authority under which he was holding the post of Executive Officer of the Temple and that the State be directed to take immediate steps to administer the Temple on the lines of Guruvayoor Devaswom. The Writ Petition was filed by the licensee of premises belonging to the Temple, against whom the management had taken steps for eviction.

B) Thereafter Writ Petition (Civil) No.4256 of 2010 was filed by the present appellants. After referring to relevant Articles of the Covenant entered into between the Ruler of the Covenanting State of Travancore and the Central Government which Covenant is dealt with in extenso hereinafter, it was submitted:-

> "Acknowledging the terms contained in the Covenant the Government of the United State of Travancore and Cochin enacted Act 15 of 1950, the Travancore Cochin Hindu Religious Institutions Act, 1950 (hereinafter referred to as 'Act') which was later acknowledged by the State of Kerala, as evidenced by later amendments making specific provisions in relation to Sree Padmanabhaswamy Temple and its properties and its administration. Chapter II of Part I of the Act deals with the Travancore Devaswom Board, Section 2(c) defines the incorporated and unincorporated Devaswom, which says that 'incorporated Devaswoms' means the Devaswoms mentioned in the schedule 1 and 'unincorporated Devaswoms' means those Devaswoms including Hindu Religious Endowments whether in or outside Travancore which were under the management of the Maharaja of Travancore and are separately dealt with.
>
> … … …

> 7. The right of the Maharaja that existed prior to the execution of the Covenant Ext. P1, which is nothing but the sovereign right, to control and supervise the administration of the Temple, the Pandaravaka properties etc. are insulated from they being made the subject matter of attacks before Courts, including The Supreme Court by Article 363 of the Constitution-Construing the Article the Supreme Court has held that no dispute touching the subject matter of a covenant etc., shall be entertained by courts including the Supreme Court. The only remedy is the one prescribed by Article 143.
>
> … … …
>
> 10. The above-mentioned rights, privileges, status etc. of the 1st petitioner vis-à-vis of the Padmanabhaswamy temple the 2nd petitioner, guaranteed by the Central Government, as discernible from Ext. P1 and preserved and protected by Article 363 of the Constitution, notwithstanding, a few members of the public with the backing of certain political parties, have filed a representative Suit O.S. 625/2007 for a permanent prohibitory injunction restraining the second petitioner from opening the six Kallaras (cellars) inside the Nalambalam."

The Writ Petition prayed that Original Suit Nos.625 of 2007, 1618 of 2009 and 1831 of 2009 be transferred by the High Court to itself and the same be disposed of on the basis of the preliminary issue regarding maintainability.

i) Original Suit No.625 of 2007 was filed in the Court of Subordinate Judge, Thiruvananthapuram alleging that the plaintiffs (respondents 3 and 4 in appeal arising out of SLP (Civil) No.12361 of 2011) were aggrieved by the state of affairs prevailing in the Temple and prayed, *inter alia,* for following reliefs:-

"A. A decree of permanent prohibitory injunction restraining the defendants, his agents, henchmen or any other person claiming to have any right in the affairs or the Temple from opening the six Kallara (cellars) inside the nalambalam which is plaint B schedule herein or take any articles from the Cellar in any form, in any manner or for any purpose or act in any manner detrimental to the interest of the deity or the devotees.

B. To pass a decree of mandatory injunction removing all articles brought inside the temple that is plaint A schedule by the 2nd defendant against the customs, practice and traditions at his own expenses or in the alternative permit the plaintiffs to remove the same at their own expenses and to recover the same from the defendants and their assets.

… … …

PLAINT SCHEDULE PROPERTIES

PLAINT "A" SCHEDULE

Sree Padmanabhaswamy Temple situated inside the Fort Area with eight entrances spread over a sprawling 7.04 acres of land together with numerous buildings, temples and all other things attached thereto of Vanchiyoor Village, Trivandrum Taluk, Trivandrum District.

PLAINT "B" SCHEDULE

a. Kallara No.1 on the southern side of the Nalambalam inside the chandanamandapam.

b. Kallara No.2 on the South west corner outside the chandanamandapam inside the nalambalam.

c. Kallara No.3 on the north western side inside the Nalambalam.

d. Kallara No.4 on the northern side inside the Nalambalam

e. Kallara No.5 inside the Sreekovil on the northern side next to the idol for Vishwaksenar.

> f. Kallara No.6 inside the Sreekovil on the south eastern corner towards the exit gate to Thekkedom Narasimhamoorthy Temple."

ii) Original Suit No.1618 of 2009 was filed by one of the employees of the Temple and prayed:-

> "(A) To declare that Defendants 3 & 4 have no authority to act as office bearers of Sree Padmanabha Swami Temple as it is legally held that they have no authority to occupy their positions, … … and for the same, necessary directions may be given to Defendants 1 & 2 about their illegal occupation.
>
> (B) To pass a decree of permanent prohibitory injunction restraining the 3rd and 4th Defendants from forcibly obstructing the plaintiff from discharging her duties as an employee which she is carrying out for the past 20 years or from doing any act which is detrimental to the interest of the Plaintiff in doing her lawful work and for which the Defendants 3 & 4 have no legal authority.
>
> (C) To pass a decree of permanent prohibitory injunction restraining the 3rd and 4th defendants from doing any act which affects her job as a Computer Operator in Ticket Counter attached to Sree Padmanabha Swami Temple."

iii) Original Suit No.1831 of 2009 was filed in the Court of Munsiff, Thiruvananthapuram by General Secretary of "Sree Padmanabhaswamy Temple Staff Organisation" (respondent No.6 in appeal arising out of SLP (Civil) No.12361 of 2011) claiming following reliefs:-

> "A. To pass a decree declaring the orders, no.5/SPST/09 dated 10.06.2009 and 14.07.2009 issued by the 2nd defendant creating the post of "Administrative Officer" and thereby posted the 3rd defendant in the said post, as void and non est, since it was done

> by the 2nd defendant without any authority, by manifestly flouting the Rules prevailing in the Temple and without legal sanctity.
>
> B. To pass a decree of mandatory injunction directing the 2nd defendant to remove the 3rd defendant from the post to which he has been assumed charges, failing which the 3rd defendant may be removed by the intervention of this Hon'ble Court."

3. In the Suits, the authority of the appellants herein to be associated with the affairs of the Temple was under challenge, while the very maintainability of the Suits was questioned by the appellants. The basic issue that arose for consideration was framed by the High Court in the judgment under appeal as:-

> "The Central issue arising in these two connected W.P. Is is whether the younger brother of the last Ruler of Travancore could after the death of the last Ruler on 20.07.1991 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 in Trivandrum."

The High Court concluded that after the definition of 'Ruler' appearing in Article 366 (22) of the Constitution of India was amended by the Constitution (Twenty Sixth Amendment) Act, 1971, the appellant No.1 could not claim to be in control or management of the Temple as successor to the last Ruler. The High Court thereafter issued 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, it's 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 treasures in the Temple, the Government should consider handing over security of the Temple to a team of Police or atleast provide 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."

The appellants, being aggrieved, are in appeal.

4. The history of the Temple was set out by the High Court during the course of its judgment, and some of the relevant extracts of the discussion were:-

> "**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 Ettuveettil 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……
>
> ….The Ettuveettil 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 Ettuveettil Pillamars, the Brahmins, and the King's son's loyalists on the other side, Marthandavarma succeeded……
>
> …Marthandavarma took over full control of the State and the Padmanabha Swamy Temple and <u>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</u>

> 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."
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> (Emphasis added)

5. The act of surrender or dedication of the entire kingdom to Sree Padmanabhaswamy as referred to by the High Court has been described in a book[2] titled "Sree Padmanabha Swamy Temple" authored by Princess Aswathi Thirunal Gouri Lakshmi Bayi as under:-

> "**Thrippati Danam – 5th of Makaram 925-ME/1750 AD**
>
> Fifth Makaram 925 ME/19th or 20th January 1750 AD (Wednesday asterism Revait) stood witness to the act of a sublime dedication, the ultimate offering possible for a crowned head, carried out in supreme devotion – the *Thrippati* Danam.[3]
>
> Like Arjuna before the Kurukshetra War and Emperor Ashoka after the Kalinga War, the futility of battles as a means to an end and the conscious feeling that the Travancore he created was built on a foundation of sacrifice of the liver and limbs of countless numbers who fell due to him and for him, deeply disturbed and distressed the Maharaja[4]. Along with the love which offered Marthanda Varma no satiation however much he might submit to his Lord, this trauma also activated him to surrender to God the Thiruvithamcoor (Travancore) stretching from Kanyakumari to Paravoor which he had won and made.

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[2] Published by Bharatiya Vidya Bhavan

[3] 1. Mathilakam Records.
2. Dr. A. G. Menon – 'History of Sri Padmanabhasvami Temple Till 1758'
3. Many historical works (too many to be listed.

[4] Sree Uthradom Thirunal Marthanda Varma Maharaja of Travancore

> Before this dedication certain religious ceremonies like *Poorna Kalasa Homam,* invoking the Deity, and so on were performed, followed later by *Mahabhishekam.*[5] Maharaja Anizhom Thirunal Marthanda Varma arrived at the appointed time in the morning accompanied by all male and female members of his family, his trusted Dewan Ramayyan and other officials. In the presence of the Swamiyar, members of the *yogam* and Brahmins, the Maharaja is submitted to Sree Padmanabha *Prajapati* by Deed of Gift carrying his signature, his entire State of Travancore along with his total right on it thereof by placing the Crown, the royal umbrella, the twin white chauries (fans), the *Manikandha;* which were all symbols of royalty along with some *Thulasi* leaves on the *Mandapam.* Last but most significant, his famous sword, which had lashed its unleashed valour in countless battle fields, the unquestioned insignia of sovereign authority which the King valued the most, was also placed with utmost reverence by the Maharaja on the step of the *Ottakkal Mandapam* leading to the sanctum. Then the King received the sword back from the high priest and returned to the Palace after worship. His directive that any further conquest of territory brought under the rule of Travancore by his successors should also be surrendered to Sree Padmanabha Swamy was accepted and scrupulously adhered to with deep respect by the later generations."

The English Translation of the Original Deed of Dedication which was drawn up in Malayalam is as under:-

> "We, Thrippappoor Keezhperur Veera Bala Marthanda Varma, Mootha Thiruvati (Senior member) of Thrippappoor and Sree Pandarakaryam Cheyvarkal, have this day, Wednesday the 5th day of the month of Thai, the seventh day of the bright lunar fortnight with Saturn residing in the eighth sign and Jupiter in the twelfth, Kollam 925, transfer by absolute gift and dedication, to endure as long as the Sun and Moon shall last, all the lands and functions appertaining thereto together with all rights and dignities, positions of honour and all other possessions that we have been hitherto enjoying as of right within the territories between the Thovala Fort in the East and the Kavana River in the West, in favour of Perumal Sree Padmanabha Perumal. In token whereof

[5] Dr. A.G. Menon – 'History of Sri Padmanabhasvami Temple Till 1758'

> we have this day executed this deed of absolute gift and dedication."

Before dealing with "Thrippati Danam" or Dedication as stated above, the Author had stated:-

> "The Royal Family had always been famous for the abundance and lavish nature of the gifts and offerings the members poured at the feet of Sree Padmanabha Swamy down the ages, from the hoary past to the pulsating present. These varied from small or routine offerings to ones of considerable value but there seems to be no offering in the known religious history of the world which merits any comparison in the sheer magnitude of emotional and devotional worth, to the *Thrippati Danam*[6] submitted by Sree Anizhom Thirunal Maharaja Marthanda Varma on the fifth day of the month of *Makaram* 925 ME/19th or 20th of January 1750 AD. Tradition had it all along, even before this Act, that the male members of the Royal Family, at the age of one, were laid on the *Ottakkal Mandapam* and surrendered to Sree Padmanabha Swamy as his own, gaining for them the supreme title of 'Sree Padmanabha Dasa.'[7] Those were individual submissions whereas this collective offering of the entire State by Marthanda Varma stands all by itself. Thenceforth he ruled the land as the Dasa (slave) of Sree Padmanabha Swamy in letter and spirit."

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[6] *1. Thrippati Danam mean the Danam made on the holy step. This offering was done by the King along with other emblems of the royalty, when he, after certain rituals placed his royal and historic sword, the symbol of sovereign authority, on the step of the Ottakkal Mandapam connecting the sanctum and made over the entire State of Travancore to Perumal Sree Padmanabha Perumal as 'Sarva Samarpana Danam' – total gift submission (Anything placed on this Mandapam becomes Temple property).*
2. Mathilakam Records – Churuna 21, Ola 89.
3. V. Nagam Aiya – The State Manual of Travancore
4. P. Shangoonny Menon – A History of Travancore

[7] Two common misconceptions exist,
1. That the Sree Padmanabha Dasas came into being with Thrippati Danam and
2. That the title of Sree Padmanabha Dasa rests only with the seniormost male member of the family. As is clear form above both are incorrect.

6. After having observed that the Temple continued to be under the direct management and control of the Kings of Travancore, the High Court made following observations about the other Devaswoms and the Temple:-

> "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 Dewaswom Department of the Government, from which it was

> taken over by the Travancore Devaswom Board on it's 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.
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> 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 is 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..."
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> (Emphasis added)

7. Mr. V. P. Menon who was the Constitutional Advisor to the Governor General till 1947 and Secretary to the Ministry of States played a stellar role in the integration of the princely States into the Dominion of India. In his book titled, "Story of Integration of the Indian States", Mr. Menon dealt with "Travancore – Cochin" in Chapter XIV and he wrote:-

> "The ruling family of Travancore traces its descent from the ancient Chera kings of South India. In later historic times,

> Travancore was split up into a number of petty principalities. The consolidation of these into a single State was the achievement of Rajah Marthanda Varma, who ruled in the first half of the eighteenth century. He brought the whole of Travancore under his sway, established order and settled the country. In January 1750, he formally and solemnly dedicated the State to Sri Padmanabha, the tutelary deity of his family; and he and his successors have ever since ruled as 'Dasas', or servants of that deity. The present ruler, Sir Rama Varma[8] succeeded to the *gaddi* in 1924 at the age of twelve and was invested with full ruling powers in November 1931. During his rule the revenues of the State were nearly quadrupled from a little over Rs. 2.5 crore to over Rs. 9.5 crore.
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> The present Maharajah of Cochin, Sir Rama Varma, is, on the other hand, well advanced in age. In fact, for over a century, the Maharajahs of Cochin had all been fairly old when they succeeded to the *gaddi*. The ruling family of Cochin claims to be directly descended from Cheraman Perumal, who once ruled Kerala. Hyder Ali and later Tippu Sultan overran the territories of Cochin in the latter half of the eighteen century, and this brough about an alliance with the English East India Company when, in 1791, the Maharajah agreed to become their tributary.
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> The ruling families in both the States follow the *Marumakkathayam law*, or the law of inheritance through the female line. The Maharajah, assuming that he has no brother, is succeeded by his sister's eldest son. This is generally the law followed by the majority of the Malayalam-speaking Hindus in both States.
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> … … …
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> He added that he governed the State on behalf and as a servant of Sri Padmanabha and that he attached great importance to this position being maintained; that if no satisfactory solution on these points was possible, and if the Government of India still insisted on the integration of the two States he would rather abdicate than act against his convictions.
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> … … …
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> Lastly, he felt that on account of the dedication of the State to Sri Padmanabha and the special loyalty and devotion which the rulers

[8] His titles are: Major-General. Sri Padmanabha Dasa, Vanchipala, Sir Bala Rama Varma, Kulasekhara Kiritapati, Manney Sultan, Maharaja Raja Rama raja Bahadur, Shamsher Jang.

of Travancore owed to that deity, it would not be possible for him to take the usual oath of office as Rajpramukh.

… … …

I reached Trivandrum on 21 May and had several meetings with the Maharajah. I told him that, with goodwill on both sides, there was no reason why we should not come to an agreement. The first hurdle was the Maharajah's inability to take the oath of office as head of the State. The devotion of the present Maharajah to Sri Padmanabha borders on fanaticism; he rules the State not as its head but as a servant of the tutelary deity.

… … ….

A problem peculiar to Travancore-Cochin related to the properties attached to temples, called *Devaswoms*. It is necessary to give some explanation of the history of the *Devaswoms* in each of these States.

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 this State has always been, and still is, the Sri Padmanabha temple, richly endowed and possessing very extensive landed properties. These were originally managed by a *Yogam* (or Synod) 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. Thereafter the temple properties became intermixed with the properties 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.

Apart from this temple, there were a large number of *Devaswoms* in the State founded and endowed by the people and managed by *ooralars*, or trustees. From ancient times, the Maharajah had *Melkoima* rights (the right of superior authority or overlordship) over the trustees. Before 1811, the State had no direct concern in the management of these temples; in that year Colonel Munro, the then British Resident for Travancore and Cochin, assumed the *Dewanship* and, in exercise of the *Melkoima* right of the Maharajah, took over the management of the *Devaswoms* in Travancore. Three hundred and forty-eight major and 1,123 minor *Devaswoms* with all their properties, were thus taken over

for management. Even then their income was considerable. In course of time, the management of yet more was assumed.

A good deal of agitation was excited on the ground that the Government of the State were spending less on the maintenance of the temples and on the religious ceremonies than the amount of revenue which accrued from the *Devaswom* properties and that they were appropriating the balance of the income to themselves. In the end, the legal position was put beyond doubt by the issue of a proclamation by the Maharajah whereby the Government of the State accepted the obligation of maintaining the temples in an efficient condition, and all lawsuits against them were barred. In 1946, the Maharajah issued another proclamation which fixed the amount payable every year to the temples at a figure of not less than Rs.25 lakhs and reserved the right of making further contributions if necessary from the State revenue. Finally, in 1948, immediately before the grant of responsible government, a proclamation was issued by which a yearly sum of Rs.50 lakhs was fixed for the maintenance of all the temples in the State, other than the Sri Padmanabha temple which was to receive Rs.1 lakh annually.

Hindu opinion in the State was unanimous in holding not only that the continued payment of the existing allotments should be guaranteed, but also that adequate compensation should be given in respect of the properties taken over by the Government and the profits derived from them. The annual contribution thus claimed ranged from Rs.1 Crore to Rs.2 Crore. Obviously, this plea could not be accepted; at the same time it was impossible to decline the obligation of maintaining these temples, the State having taken over all their properties.

I discussed the question with the ministries, as well as with the Maharajah of Travancore. Eventually we came to an agreement by which the annual payment of Rs.51 lakhs made to the temples by the Travancore Government would be continued and out of this amount a sum of Rs.6 lakhs would be contributed annually for the maintenance of the Sri Padmanabha temple.

The most difficult issue related to the administration of this grant. After prolonged discussion it was agreed that the administration of the Sri Padmanabha temple should be conducted under the control and supervision of the Maharajah through an executive officer to be appointed by him. It was decided that there should be a committee of three Hindu members nominated by the

Maharajah to advise him; and that one of the three should be nominated on the advice of the Hindu members of the Council of ministers. With regard to the other temples in Travancore, a body to be called the Travancore Devaswom Board would be set up. This Board would consist of three Hindu members, one of whom would be nominated by the Maharajah, one elected by the Hindus among the Council of Ministers and one by the Hindu members of the Legislative Assembly of the Union.

In Cochin, unlike Travancore, the properties of the temples were administered separately as a 'reserved subject' by the, Maharajah; but after the grant of responsible government, he appointed the Premier of the State to act in his personal capacity as the chief executive authority for Devaswoms. The Poornathrayeesa temple at Trippunithura is the temple of the ruling family and the Maharajah asked for the control of the rituals and ceremonies in this temple, as well as for those in the Pazhayannur temple. I agreed to this request. It was decided to set up a Devaswom Board in Cochin on the same lines as in Travancore. As the Devaswom properties had remained separate, there was no necessity to make any special grant from State revenues. The landed properties of the temples, I should add, are subject to the land revenue and tenancy laws of the State just like any other landed properties.

These decisions were subsequently incorporated in the covenant. Later on, when the Constitution of India was being finalized, a provision was included to safeguard the payment to the temples in Travancore by making it charged and non-votable by the Legislature of the Union.

It must be emphasized here that this provision in the covenant relating to Devaswoms brought about a far-reaching social reform in both States. These two States had been the seat of an orthodoxy not found in any other part of India except Malabar. The Temple-entry reform in Travancore recognized to a certain extent the place of harijans in the Hindu society; but under the covenant, the Harijans would gain a measure of control of the temples through their representatives in the Legislature and in the ministry and would also be able to hold posts in the Devaswom Department which had hitherto been denied to them.

The press had been kept fully informed of the progress of the discussions and during one of my press conferences, there were some criticism regarding the provision for maintenance of the temples in Travancore. I pointed out to the critics that the

> properties of the temples taken over by the Travancore State Government had increased many times in value and yielded an income greater than the amount of contribution provided in the covenant. If the contribution was considered undesirable or excessive, the State would have no option but to return the properties to the temple. The State could not have it both ways, by refusing to return the properties while at the same time refusing to maintain the Devaswoms."

Mr. V.P. Menon thus adverted to the issues: that after dedication in January 1750, Raja Marthanda Varma and his successors ruled as "Dasas" or servants of the deity Sri Padmanabhaswamy; that the ruling families of Travancore and Cochin followed the *Marumakkathayam law* or the law of inheritance through the female line; that an agreement was arrived at, by which annual payment of Rs.51 lakhs made to the temples by the Travancore Government would be continued, and out of said amount a sum of Rs.6 lakhs would be contributed annually for the maintenance of the Temple; that the administration of the Temple should be conducted under the control and supervision of the Maharaja of Travancore through an Executive Officer appointed by him; and that as against such contribution the value of the properties of the temples taken over by the State Government was far greater. He also referred to the stand of the Ruler of Cochin with respect to the rituals and ceremonies in the Poornathrayeesa Temple at Trippunithura.

8. On 10.08.1947 a Proclamation was issued by the Maharaja of Travancore which stated:-

> "WHEREAS our Ancestors and Ourselves have, as devotees of Sri Padmanabha, been ruling over the State of Travancore during many centuries and our sole concern has been the welfare and happiness of our subjects whom we have been associating with us and propose further to associate with us in the administration of the State;
>
> And Whereas it has become necessary, in the events that have happened to regulated the succession to the Throne of Travancore, to determine other questions incidental thereto, to regulate and fix the civil list of ourselves and the members of Our Royal Family and to make provision for certain other purposes,
>
> And Whereas in respect of succession, adoption, marriage, and other matters, our royal family has from time immemorial 20ecognized and observed the *Marumakkathayam law* as modified by custom and usage in Our Royal Family,
>
> We are pleased to Command and Enact as follows-
>
> 1. The succession to the Throne of Travancore shall be in accordance with the *Marumakkathayam law* as modified by the custom and usage prevailing and 20ecognized in Our Royal Family from time immemorial.
>
> 2. In case the Sovereign, on the date of His succession, under the age of eighteen years, then , until he attains the age of eighteen years, and where the Sovereign is incapacitated by serious illness, the powers and authorities belonging to the Sovereign of Travancore shall be exercised in the name and on behalf of the Sovereign by a Council of Regency consisting of three of the senior most members of Our Royal Family, who are above eighteen years of age, or of such lesser number of members as may be available.
>
> 3. Provided always that the Council shall not be entitled to change the rule or order of succession or otherwise to hinder

> or delay the assumption of ruling powers by the rightful heir to the Throne."

9. It may be mentioned at this stage that Section 6 of the Government of India Act, 1935 dealt with "Accession of Indian States" while certain expressions including "Ruler" were defined in Section 311(1) thereof. The expression "Ruler" was defined as under:

> "311. (1) In this Act, and unless the context otherwise requires, in any other Act the following expressions have the meaning hereby respectively assigned to them, that is to say :–
>
> … … …
>
> "Ruler" in relation to a State means the Prince, Chief or other person recognized by His Majesty as the Ruler of the State."

After Independence, the India (Provisional Constitution) Order, 1947, omitted said Section 311(1). Section 6 which was retained, was to the following effect:-

> "6 – (1) An Indian State shall be deemed to have acceded to the Dominion if the governor-General has signified his acceptance of an Instrument of Accession executed by the Ruler thereof whereby the Ruler on behalf of the State:-
>
> (a) Declares that he accedes to the Dominion with the intent that the Governor- General, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in

relation to the State such functions as may be vested in them by order under this Act; and

(b) assumes the obligation of ensuring that due effect is given within the State to the provisions of this Act so far as they are applicable therein by virtue of the Instrument of Accession.

(2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Dominion Legislature may make laws for the State, and the limitations, if any, to which the power of the Dominion Legislature to make laws for the State, and the exercise of the executive authority of the Dominion in the State, are respectively to be subject.

(3) A Ruler may, by a supplementary Instrument executed by him and accepted by the Governor-General, vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by any Dominion authority in relation to his State.

(4) References in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler of the State, whether by reason of the Ruler's minority or for any other reason.

(5) In this Act a State which has acceded to the Dominion is referred to as an Acceding State and the Instrument by virtue of which a State has so acceded, construed together with any supplementary Instrument executed under this section, is referred to as the Instrument of Accession of that State.

(6) As soon as may be after any Instrument of Accession or supplementary Instrument has been accepted by the Governor-Genera] under this section, copies of the Instrument and of the Governor-General's acceptance thereof shall be laid before the Dominion Legislature and all courts shall take judicial notice of every such Instrument and acceptance."

10. The Travancore Interim Constitution Act, 1123 came into force on 24.03.1948. Sections 1, 2 and 4 of said Act were:-

> "1. (1) This Act may be called the Travancore Interim Constitution Act, 1123.
>
> (2) It shall come into force at once.
>
> (3) It shall remain in force until the new Constitution Act framed by the Representative Body comes into force.
>
> 2. In this Act 'Our Government' means the Maharaja of Travancore exercising the executive authority of the Travancore State in accordance with the provisions of this Act.
>
> … … …
>
> 4. The following subjects, namely,
>
> (a) Our Palace and Our Royal Family and all matters connected therewith, including Sri Pandaravaka,
>
> (b) Devaswoms, Hindu Religious Endowments and matters connected therewith, shall be under our exclusive control and supervision and shall not, in any respect, be within the scope or purview of the Council of Ministers or the Legislative Assembly."

11. The aspects referred to by Mr. V.P. Menon find clearly reflected in the Covenant entered into by the Maharajas of Travancore and Cochin with the Government of India. Mr. V.P. Menon had signed the Covenant on behalf of the Government of India. The Covenant signed by the Maharajas of Travancore and Cochin on 27.05.1949 and 29.05.1949 respectively (hereinafter referred to as 'the Covenant') as Rulers of the respective Covenanting States had twenty-two Articles and the relevant portions of the Covenant were:-

"THE COVENANT
ENTERED INTO BY THE RULERS OF TRAVANCORE
AND COCHIN FOR THE FORMATION OF THE UNITED
STATE OF TRAVANCORE AND COCHIN

WE, the Rulers of Travancore and Cochin, do hereby, with the concurrence and guarantee of the Government of India, enter into the following Covenant.

Article I

As from the first day of July, 1949, the States of Travancore and Cochin shall be united in, and shall form, one State, with a common executive, legislature and judiciary, by the name of the United State of Travancore and Cochin.

Article II

In the succeeding Articles of this Covenant, the first day of July, 1949, is referred to as the appointed day, the States of Travancore and Cochin are referred to as the Covenanting States, and the United State of Travancore and Cochin is referred to as the United State.

Article III

As from the appointed day,

(a) all right, authority and jurisdiction belonging to the Ruler of either of the Covenanting States which appertain or are incidental to the Government of the State shall vest in the United State;

(b) all duties and obligations of the Ruler of either of the Covenanting States pertaining or incidental to the Government of that State shall devolve on the United State, and shall be discharged by it; and

(c) all the assets and liabilities of either Covenanting State shall be the assets and liabilities of the United State.

Article IV

(1) There shall be a Raj Pramukh for the United State.

(2) The present Ruler of Travancore shall be the first Raj Pramukh and shall be entitled to hold office during his life-time.

(3) In the event of a permanent vacancy arising in the office of the Raj Pramukh by death, resignation or any other reason, such vacancy shall be filled in such manner as the Governer General of India may prescribe.

(4) Notwithstanding anything contained in this Article, if the Raj Pramukh is by reason of absence or illness or for any other reason unable to perform the duties of his office, those duties shall until he has resumed them be performed in such manner as the Governor General of India may prescribe.

… … …

Article VI

Subject to the provisions of this Covenant, the executive authority of the United State shall be exercised by the Raj Pramukh either directly or through officers subordinate to him; but nothing in this Article shall prevent any competent legislature of the United State from conferring functions upon subordinate authorities or be deemed to transfer to the Raj Pramukh any functions conferred by any existing law on any court, judge or officer or any local or other authority in either of the Covenanting states.

Article VII

(1) There shall be a Council of Ministers to aid and advise the Raj Pramukh in the exercise of his functions save as provided in Articles XII and XIII.

(2) The Ministers shall be chosen by, and shall hold office during the pleasure of, the Raj Pramukh.

Article VIII

(a) The obligation of the covenanting State of Travancore to contribute from its general revenues a sum of Rs.50 lakhs every year to the Devaswom fund as provided for in the Devaswom (Amendment) Proclamation, 1123 M.E., and a sum of Rs.1 lakh every year to Sri Pandaravaga referred to in proviso (a) to sub-

section (1) of Section 23 of the Travancore Interim Constitution Act 1123 M.E., shall, from the appointed day, be an obligation of the United State and the said amounts shall be payable therefrom and the Raj Pramukh shall cause the said amounts to be paid every year to the Travancore Devaswom Board and the Executive Officer (referred to in sub-clause (b) of this article) respectively.

(b) The administration of Sri Padmanabhaswamy Temple, the Sri 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 Padamanabhaswamy 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 Padmanbhaswamy 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 Padamanbhaswamy Temple or in respect of its properties shall be instituted in the name of the said Executive Officer.

(c) The administration of the incorporation and unincorporated Devaswoms and of Hindu Religious Institutions and Endowments and all their properties and funds as well as the fund constituted under the Devaswom Proclamation 1097 M.E. and the surplus fund constituted under the Devaswom (Amendment) Proclamation, 1122 M.E. which are under the management of the Ruler of the covenanting State of Travancore and the sum of Rs.50 lakhs transferred from year to year under clause (a) shall with effect from the first day of August 1949 vest in a Board known by the name of the Travancore Devaswom Board. An annual contribution of Five lakhs of Rupees shall be made by the Travancore Devaswom Board from the aforesaid sum of Rs.50 lakhs towards the expenditure in the Sree Padmanabhaswamy Temple.

(d) The administration of the incorporated and unincorporated Devaswoms and Hindu Religious Institutions which are under the management of the Ruler of the covenanting State of Cochin under Section 50 G of the Government of Cochin Act, XX of 1113 M.E., or under the provisions of the Cochin Hindu Religious

Institutions Act, I of 1081 M.E., and all their properties and funds and of the Estates under the management of the Devaswom Department of the covenanting State of Cochin, shall with effect from the first day of August 1949 vest in a Board known by the name of the Cochin Devaswom Board.

Provided that the regulation and control of all rituals and ceremonies in the temple of Sree Poornathrayeesa at Trippunithura and in the Pazayannore Bhagavathy temple at Pazayannore shall continue to be exercised as hither to by the Ruler of Cochin.

(e) The Board referred to in sub-clause I of this article shall consist of three Hindu Members, one of whom shall be nominated by the Ruler of the convenanting State of Travancore, one by the Hindu among the Council of Ministers, and one elected by the Hindu members of the Legislative Assembly of the United State.

(f) The Board referred to in sub-clause (d) of this article shall consist of three Hindu Members, one of whom shall be nominated by the Ruler of the covenanting State of Cochin, one by the Hindus among the Council of Ministers, and one elected by the Hindu Members of the Legislative Assembly of the United State.

(g) Each of the aforesaid Boards shall be a separate body corporate having perpetual succession and a common seal with powers to hold and acquire properties and shall by its name sue and be sued.

(h) Subject to the provisions of this article, the constitution, powers and duties of the Boards aforesaid shall be such as may be determined hereafter by law enacted by competent authority.

Article IX

The Raj Pramukh shall, within a fortnight of the appointed day, execute on behalf of the United State an Instrument of Accession in accordance with the provisions of Section 6 of the Government of India Act, 1935, and in place of the Instruments of Accession of the Covenanting States; and he shall by such Instrument accept as matters with respect to which the Dominion Legislature may make laws for the United State all the matters mentioned in List I and List III of the Seventh Schedule to the said Act, except the entries in List I relating to any tax or duty;

Provided that nothing in this Article shall be deemed to prevent the Raj Pramukh from accepting by a Supplementary Instrument any or all of the entries in the said List I relating to any tax or duty as matters with respect to which the Dominion Legislature may make laws for the United State; and in doing so the Raj Pramukh may specify the limitations, if any, subject to which the power of the Dominion Legislature to make laws for the United State in respect of such matters and the exercise of the executive authority of the Dominion in the United State are respectively to be subject.

Article X

(1) There shall be a Legislature for the United State consisting of the Raj Pramukh and the Legislative Assembly.

(2) All persons, who, immediately before the appointed day, are members of the Representative Body of Travancore or the Legislative Assembly of Cochin, shall on that day become members of the Legislative Assembly of the United State.

(3) If immediately before the appointed day any vacancy exists in the membership of the Representative Body of Travancore or the Legislative Assembly of Cochin, it shall be deemed to be a vacancy in the membership of the Legislative Assembly of the United State; and any such vacancy and any vacancy that may occur after the appointed day shall be filled in the same manner as it would have been filled if this Covenant had not been entered into.

(4) The Legislature of the United State shall subject to the provisions of this Covenant have full power to make laws for the United State, including provisions as to the Constitution of the United State, within the framework of this Covenant and the Constitution of India.

Article XI

Until a Constitution framed or adopted by the Legislature comes into operation, the Raj Pramukh shall have power to make and promulgate Ordinances for the peace and good government of the United State or any part thereof, and any Ordinance so made shall for the space of not more than six months from its promulgation have the like force of law as an Act of the Legislature, but any such Ordinance may be controlled or superseded by any such Act.

Article XII

If at any time before a Constitution framed or adopted by the Legislature comes into operation, the Raj Pramukh is satisfied that a situation has arisen in which the Government of the United State cannot be carried on in accordance with the provisions of this Covenant, he may, with the prior concurrence of the Government of India, by Proclamation-

(a) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion;

(b) assume to himself all or any of the powers vested in or exercisable by any authority or body within the United State;

and any such Proclamation may contain such incidental and consequential provisions as may appear to him necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending, in whole or part, the operation of any provisions of this Covenant or of any other constitutional provisions relating to any authority or body in the United State:

Provided that nothing in this Article shall authorize the Raj Pramukh to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend, either in whole or in part, the operation of any law relating to a High Court.

… … …

Article XIV

(1) The Ruler of each Covenanting State shall be entitled to receive annually from the revenue of the United State for his privy purse the amounts specified against that Covenanting State in the Schedule:

Provided that the sums specified in the Schedule in respect of the Ruler of Travancore shall be payable only to the present Ruler and not to his successors for whom provision will be made subsequently by the Government of India.

(2) The said amount is intended to cover all the expenses of the Ruler including expenses on residence and ceremonies and shall neither be increased nor reduced for any reason whatsoever.

(3) The United State shall pay the said amount to the Ruler in four equal instalments at the beginning of each quarter in advance.

(4) The said amount shall be free of all taxes whether imposed by the Government of the United State or by the Government of India.

Article XV

(1) The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him immediately before the appointed day.

(2) He shall furnish to the Government of India in the Ministry of States before the 1st day of September 1949 an inventory of all immovable property, securities and cash balance held by him as such private property.

(3) If any dispute arises as to whether any item of property is the private property of the Ruler or State property, it shall be referred to such person as the Government of India may nominate in consultation with the Ruler of Travancore or Cochin as the case may be, and the decision of that person shall be final and binding on all parties concerned.

Article XVI

The Ruler of each Covenanting State, as also the member of his family, shall be entitled to all the personal privileges, dignities and titles enjoyed by them, whether within or outside the territories of the State, immediately before the 15th day of August, 1947.

Article XVII

(1) The succession, according to law and custom to the gaddi of each Covenanting State and to the personal rights, privileges, dignities and titles of the Ruler thereof is hereby guaranteed.

(2) Every question of disputed succession in regard to a Covenanting State shall be decided by the Raj Pramukh after referring it to the High Court of the United State and in accordance with the opinion given by the High Court.

… … …

Article XXI

Notwithstanding anything contained in the preceding provisions of this Covenant, the Rulers of Travancore and Cochin shall continue to have and exercise their present powers of suspension, remission or commutation of death sentences in respect of any person who may have been or is hereafter sentenced to death for capital offence/committed within the territories of Travancore or Cochin as the case may be."

At the end, Schedule mentioned the amounts of Privy Purses whereafter the signatures were appended.

"**S C H E D U L E**

Covenanting States and Privy Purse amounts.

	Rs.
Travancore	18 lakhs.
Cochin	2,35,000.

In confirmation of the above Covenant we append our signatures, on behalf of ourselves, our heirs and successors.

Sd/-
Trivandrum, 27.5.49 MAHARAJA OF TRAVANCORE

Sd/-
Trippunithara, 29.5.49 MAHARAJA OF COCHIN

The Government of India hereby concur in the above Covenant and guarantee all its provisions. In confirmation whereof Mr. Vapal Pangunni Menon, Advisor to the Government of India in the Ministry of States, appends his signature on behalf and with the authority of the Government of India.

Sd/-
ADVISER TO THE GOVERNMENT OF
INDIA
MINISTRY OF STATES."

12. The Constitution of India made certain provisions with regard to privy purse sums payable to the Rulers in terms of any covenant or agreement entered into by the Ruler of the State before the commencement of the Constitution, as also with regard to the rights and privileges of Rulers of Indian States. In terms of Article 238 (10), which Article has since then been repealed by the Constitution (Seventh Amendment) Act, 1956, it was provided that a sum of Rupees 51 lakhs (fifty one lakhs), as provided in the Covenant, shall be paid to the Devaswom Board. Articles 291, 362, 363 and 366(22) as they stood before the Constitution (Twenty Sixth Amendment) Act, 1971 were:-

> "**Art.291:Privy Purse sums of Rulers**- Where under any covenant or agreement entered into by the ruler of any Indian State before the commencement of this Constitution, the payment of any sums free of tax has been guaranteed or assured by the Government of the Dominion of India to any ruler as such as privy purse:
>
> (a) Any sums shall be charged on and paid out of the Consolidated Fund of India; and
>
> (b) The sums so paid to any Ruler shall be exempt from all taxes on income.
>
> … … …
>
> **Art.362: Rights and Privileges of rulers of Indian States.-** In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee

or assurance given under any such covenant or agreement as is referred to in Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.

… … …

Art. 363: Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.- (1) Notwithstanding anything in this Constitution but subject to the provisions of Article 143, neither the Supreme Court nor any other Court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

(2) In this Article-

(a) "Indian State" means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and

(b) "Ruler" includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.

… … …

Art.366: Definitions- In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

1) to 21) ... ...

22) Ruler in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in Clause (1) of Article 291 was entered into and

> who for the time being is recognized by the President of India as the ruler of the State and includes any person as the successor of such Ruler.
>
> 23) to 30) ….."

13. Soon after the coming into force of the Constitution, the Travancore-Cochin Hindu Religious Institutions Act, 1950 (hereinafter referred to as "the TC Act") was enacted to make provision for the administration, supervision and control of incorporated and unincorporated Devaswoms and of other Hindu Religious Endowments and Funds. Part I of the TC Act comprising of Sections 2 to 60 extends to Travancore, while Part II comprising of Sections 61 to 130 extends to Cochin and Part III extends to the whole of the State except Malabar area.

13.1 Section 2 defines expressions 'Hindu' and 'Hindu Religious Endowment' as :-

> "(aa) "Hindu" means a person who is a Hindu by birth or by conversion and professes the Hindu religion:
>
> Provided that a hindu member to be nominated or elected to the Board under Section 4 shall be a person who believes in God and temple worship and who shall make an oath before the Secretary of the Board to that effect in the form prescribed by the Government for the purpose before he enters upon his office;
>
> (b) "Hindu Religious Endowment" means-

(i) every Hindu temple or shrine or other religious endowment dedicated to, or used as of right by, the Hindu community \or any section thereof; and

(ii) every other Hindu endowment or foundation, by whatever local designation known, and property, endowments and offerings connected therewith, whether applied wholly to religious purposes or partly to charitable or other purposes, and every express or constructive trust by which property or money is vested in the hands of any person or persons by virtue of hereditary succession or otherwise for such purposes:

but shall not include any Hindu religious institution belonging to and under the sole management of a single family:

Provided that, where the Management of religious institution has passed into the hands of several branches by division among the members of the original family, the institution may nevertheless be considered as being in the management of a single family for the purpose of this Part.

Explanation - The expression "hereditary succession" shall include succession to a "Guru" by a disciple by nomination or otherwise;"

13.2 Chapter II of Part I deals with "The Travancore Devaswom". Sections 3, 4 and 15 appearing in said Chapter II are:-

"3. Vesting of administration in Board.- The administration of incorporated and unincorporated Devaswoms and of Hindu Religious Endowments and all their properties and funds as well as the fund constituted under the Devaswom Proclamation, 1097 M.E. and the Surplus Fund constituted under the Devaswom (Amendment) Proclamation, 1122 M.E. which were under the management of the Ruler of Travancore prior to the first day of July, 1949, except the Sree Padmanabhaswamy Temple, Sree Pandaravaka properties and all other properties and funds of the said temple, and the management of all institutions which were under the Devaswom Department shall vest in the Travancore Devaswom Board.

> **4. Constitution of the Travancore Devaswom Board**.- (1) The Board referred to in Section 3 shall consist of three Hindu members, two of whom shall be nominated by the Hindus among the Council of Ministers and one elected by the Hindus among the members of the Legislative Assembly of the State of Kerala.
>
> (2) The Board shall be a body corporate having perpetual succession and a common seal with power to hold and acquire properties for and on behalf of the incorporated and unincorporated Devaswoms and Hindu Religious institutions and Endowments under the management of the Board.
>
> (4) The Board shall by its name sue and be sued and the Secretary to the Board shall represent the Board In such suits.
>
> … … …
>
> **15. Vesting of jurisdiction in the Board.-** (1) Subject to the provisions of Chapter III of this Part, all rights, authority and jurisdiction belonging to or exercised by the Ruler of Travancore prior to the first day of July, 1949, in respect of Devaswoms and Hindu Religious Endowments shall vest in and be exercised by the Board in accordance with the provisions of this Act.
>
> (2) The Board shall exercise all powers of direction, control and supervision over the incorporated and unincorporated Devaswoms and Hindu Religious Endowments under their jurisdiction."

13.3 Chapter III of Part I comprising of Sections 18 to 23 deals specifically with "Sree Padmanabhaswamy Temple" and said Sections are to the following effect:-

> "**18. Administration by Executive Officer. -** (1) Out of the amount of forty-six lakhs and fifty thousand rupees provided for payment to 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.

19. Suits by or against Executive Officer. - 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.

20. Constitution of the Sree Padmanabhaswamy Temple Committee. - There shall be a Committee known by the name of the Sree Padmanabhaswamy Temple committee to advise the Ruler of Travancore in the discharge of his functions. The Committee shall be composed of three Hindu members who shall be nominated by the Ruler of Travancore and shall hold office for such term as he may determine.

21. Chairman of the Committee. - (1) The Ruler of Travancore shall nominate one of the members to be the Chairman of the Committee.

(2) The Committee shall meet at least one in quarter in Trivandrum.

(3) The members of the Committee shall be paid such travelling allowance and siting for as the Ruler of Travancore may from time to time determine.

22. Secretary of the Committee. - (1) The Executive Officer of the Temple shall be the Secretary to the Committee.

(2) The Secretary shall convene the meetings of the Committee on such dates as may fix in consultation with the Chairman. He shall, after consulting the Chairman to the Ruler of Travancore, prepare the age and give the members notice of the day of time when the meeting is to be held and of business to be transacted thereat.

(3) A copy of the minutes of the proceedings every meeting shall be communicated by the Chairman to the Ruler of Travancore.

23. Existing arrangements regarding properties and collection to continue. - Until other arrangements are made, the

> existing arrangements regarding the management of the Sree Pandaravarga Properties and the collection of revenues therefrom shall continue as heretofore."

13.4 Chapter IV of Part I deals with Incorporated and Unincorporated Devaswoms and Section 33 appearing in said Chapter reads:-

> **"33.** Budget and Administration Report.-(1) The Board shall in each year prepare a budget for the next financial year showing the probable receipts and disbursements of the incorporated and unincorporated Devaswoms and Hindu Religious institutions under the management of the Board during that financial year. The Board shall also within two months of the commencement of each financial year submit to the Government[9] such number of copies of the budget so prepared as the Government may direct.
>
> (2) The Board shall in each financial year prepare an annual administration report of the working of the Board during that year and shall within three months of the commencement of the next financial year submit to the Government[9] such number of copies of the said report as the Government[10] may direct."

13.5 Sections 36 and 37 dealing with power of Devaswom Commissioner to call for periodical accounts and assumption of management of Hindu Religious Endowments by Board appear in Chapter V of Part I and are as follows: -

> **"36. Devaswom Commissioner's powers to call for periodical accounts, etc**.- It shall be competent to the Devaswom Commissioner by a notice to call upon the trustees or managers of any Endowment falling under the definition in Section 2, clause (b) to submit periodical accounts of income and

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9 By Amendment to the TC Act effected in 1974, the expression "the Government" stood substituted for the expression "The Ruler of Travancore"

10 By same Amendment, the expression "the Government" was substituted for the expression "the Ruler"

expenditure or lists of properties, jewels, vessels, furniture or other things belonging to the Endowments under their charge or depute any officer of the Devaswom Department to examine and verify the same.

It shall also be competent to the officer so deputed to call upon the trustees and managers by a notice to furnish him with all the accounts or other records or information he may require for the purpose of examination and verification and also to assist him in the examination of accounts and movable property.

The notice shall be served in the manner prescribed by the Code of Civil Procedure for the time being in force for the service of summons.

Where the officer deputed under this Section finds that any movables are likely to be removed or misappropriated, he shall make an immediate report to the Devaswom Commissioner taking such steps for their temporary safe custody as may be necessary. On receipt of such report, the Devaswom Commissioner may, after hearing the parties concerned, pass such orders as he may think proper.

Any trustee or manager who wilfully or contumaciously disobeys any order passed by the Devaswom Commissioner or any notice issued under this Section shall be deemed to have committed an offence under Section 181 of the Travancore Penal Code and he shall be liable to be prosecuted therefor.

"Trustee" shall mean, for the purposes of this Chapter the person or persons in whom the administration of the affairs of a religious endowment is vested in trust of holding any property in trust therefor, by whatever designation such person or persons may be known.

37. Assumption of management of Hindu Religious Endowments by Board.- (1) The Board may assume the management of Hindu Religious Endowments in the following Cases:-

(a) On the application and the request by a majority consisting of not less than two-thirds of the trustees, or of the donors in cases where the donors have reserved to themselves the power of appointing and dismissing trustees.

(b) On the refusal of the trustees to continue in the trusteeship or on their own admission of incapacity to continue in the trust management.

(c) In cases where the Ruler of Travancore had the right to take part in the management by appointment of certain officers or servants according to existing usages, if the trustees have failed to carry on their duties properly and in the best interests of the institution.

(d) In cases where the Ruler of Travancore had the right to succeed to the right of management, in part, by reason of escheat of trustees, if the remaining trustees have failed to carry on their duties properly and in the best interests of the institution.

(e) In cases of proved mismanagement although the institutions do not fall under clause (c) or clause (d) of this sub-section.

Explanation. - The word "donors' includes the legal representatives of the donors.

(2) Notwithstanding anything contained in sub-section (1) the Board may, instead of assuming management, exercise such superintendence in the management over any institution to which this Part applies as to best fulfil the objects of the trust, if the trustees have failed to carry on their duties properly and in the best interests of the institution.

(3) The Board may make rules for the purpose of carrying into effect the provisions contained in sub-section (2)

(4) Any person deeming himself aggrieved by an order of assumption passed on any of the grounds mentioned in clause (c), (d) and (e) of sub-section (1) of this section may, within a period of six months from the date of the publication of the order of assumption in the Kerala Government Gazette, institute in the District Court, within whose jurisdiction the subject matter is situate, a suit against the Board to set aside such order:

Provided that subject to the result of the suit, if any, the order of assumption shall be final."

13.6 Section 61 appearing in Part II defines expressions “Founder”, "Hereditary Trustee" and “Hindu” as :-

> "(3) "founder" shall include his legal representatives;
>
> (4) "hereditary trustee" shall mean the trustee of an institution, succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founders so long as such mode of succession is in force;
>
> (4A) " Hindu" means a person who is a Hindu by birth or by conversion and professes the Hindu religion:
>
> Provided that a Hindu member to be nominated or elected to the Board under Section 63 shall be a person who believes in God and temple worship and who shall make an oath before the Secretary of the Board to that effect in the form prescribed by the Government for the purpose before he enters upon his office."

Section 62 states :-

> **"62. Vesting of administration in the Board.-** (1) The administration of incorporated and unincorporated Devaswoms and Hindu Religious Institutions which were under the management of the Ruler of Cochin immediately prior to the first day of July, 1949 either under Section 50G of the Government of Cochin Act, XX of 1113, or under the provisions of the Cochin Hindu Religious Institutions Act, I of 1081, and all their properties and funds and of the estates and all institutions under the management of the Devaswom Department of Cochin, shall vest in the Cochin Devaswom Board.
>
> (2) Notwithstanding the provisions contained in sub-section(1) the regulation and control of all rituals and ceremonies in the temple of Sree Poornathrayeesa at Trippunittura and in the Pazhayannur Bhagavathy temple at Pazhayannur shall continue to be exercised as hitherto by the Ruler of Cochin."

Section 128 states:-

> **"128. Board to exercise powers under Proclamation of 1094.-** The powers vested in the Government and the Diwan by Proclamation dated the 13th day of Edavam 1094 as amended by Proclamation, VII of 1120, shall be vested in and exercised by the Board and the said Proclamation shall have effect as if for the words "our Government" and "Our Diwan" occurring therein the words "the Cochin Devaswom Board" were substituted."

14. The Hindu Succession Act, 1956 enacted by the Parliament to amend and codify the law relating to Intestate Succession among Hindus came into force on 17.06.1956. Section 5 of said Act reads:-

> "**5. Act not to apply to certain properties**.–This Act shall not apply to—
>
> (i) any property succession to which is regulated by the Indian Succession Act, 1925, by reason of the provisions contained in section 21 of the Special Marriage Act, 1954;
>
> (ii) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;
>
> (iii) the Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124) dated 29th June, 1949, promulgated by the Maharaja of Cochin."

15. The Constitution (Seventh Amendment) Act, 1956 deleted Part VII comprising of Article 238, but inserted Article 290A into the Constitution. Said Article 290A is to the following effect:-

> "**290A. Annual payment to certain Devaswom Funds.-** A sum of forty-six lakhs and fifty thousand rupees shall be charged on , and paid out of, the Consolidated Fund of the State of Kerala every year to the Travancore Devaswom Fund; and a sum of thirteen lakhs and fifty thousand rupees shall be charged on, and paid out of the Consolidated Fund of the State of Tamil Nadu, every year to the Devaswom Fund established in that Sate for the maintenance of Hindu temples and shrined in the territories transferred to that State on the 1st day of November, 1956, from the State of Travancore-Cochin."

The sum assured in the Covenant and as reflected in Article 238 was Rupees 51 lakhs. However, after the reorganization of the States, control with respect to certain Devaswoms falling in its territories vested with State of Madras (now State of Tamil Nadu) and as such there was modification in the amount allocable to Devaswoms in the State of Kerala as successor to the erstwhile State of Travancore and Cochin.

16. Orders[11] passed by the President of India declaring that the Rulers of Indian States ceased to be recognized as Rulers of respective Indian States, gave rise to challenge on behalf of the Rulers and was dealt with by this Court in ***Madhav Rao Jivaji Rao Scindia v. Union of India[12].*** By a majority of 9:2, the Constitution Bench of this Court declared the orders passed by the President of

11 Dated 06.09.1970 and published in the Gazette of India of 19.09.1970.
12 (1971) 1 SCC 85 decided on 15.12.1970

India to be illegal. At this stage, the following reference to the administration of the Temple and the right of the Ruler of Travancore in terms of Article VIII(b) of the Covenant in the Judgment of K.S. Hegde, J. may be noted:-

> **"186.** In respect of the administration of Padamanabhaswamy Temple the right of the Ruler of Travancore was preserved under Article VIII(*b*) of the covenant. Similarly the existing rights of the Rulers of Travancore and Cochin as regards the management of certain temples and funds were preserved. They were also given a right to nominate some members to some of the statutory Boards. From the foregoing it is seen that under the various covenants, several rights in addition to the right of receiving privy purses had been created in favour of the Rulers of some of the covenanting States."
>
> (Emphasis added)

17. Soon thereafter the Parliament enacted the Constitution (Twenty Sixth Amendment) Act, 1971 which came into force on 28.12.1971. It omitted Articles 291 and 362; inserted new Article 363A; and amended the definition of Ruler appearing in clause 22 of Article 366. The Statement of Objects and Reasons for said Amendment was as under:-

> "The concept of rulership, with privy purses and special privileges unrelated to any current functions and social purposes, was incompatible with an egalitarian social order. Government have, therefore, decided to terminate the privy purses and privileges of the Rulers of former Indian States. It is necessary for this purpose, apart from amending the relevant provisions of the Constitution, to insert a new Article therein so as to terminate expressly the recognition already granted to such Rulers and to abolish privy purses and extinguish all rights, liabilities and obligations in respect of privy purses. Hence this Bill."

Article 363A and Article 366 (22), after the Amendment read as under:-

> "**363A. Recognition granted to Rulers of Indian States to cease and privy purses to be abolished.**- Notwithstanding anything in this Constitution or in any law for the time being in force-
>
> (a) The Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognized by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognized by the President as the successor of such Ruler shall, on and from such commencement, cease to be recognized as such Ruler or the successor of such Ruler;
>
> (b) On and from the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, privy purse is abolished and all rights, liabilities and obligations in respect of privy purse are extinguished and accordingly the Ruler or, as the case may be, the successor of such Ruler, referred to in clause (a) or any other person shall not be paid any sum as privy purse.
>
> … … …
>
> **Article 366 (22)**
>
> (22) "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;"

18. State of Kerala enacted Sree Pandaravaka Lands (Vesting and Enfranchisement) Act, 1971. Section 2(k) defines "Temple" to mean Sree Padmanabhaswamy Temple and Section 3 of the Act is to the following effect:-

"(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 estinguished;

(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 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."

19. The Parliament enacted the Rulers of Indian States (Abolition of Privileges) Act, 1972 ('1972 Act', for short) "to amend certain enactments

consequent on derecognition of Rulers of Indian States and abolition of privy purses, so as to abolish the privileges of Rulers and to make certain transitional provisions to enable the said Rulers to adjust progressively to the changed circumstances". The Statement of Objects and Reasons stated:-

> "With the derecognition of Rulers and the abolition of privy purse, the historical considerations on the basis of which special privileges were given to Rulers of Indian States have ceased to be valid and the indefinite continuance of those privileges would be indefensible. However, in order to enable the former Rulers to adjust progressively to the changed circumstances on account of the abolition of privy purse, it appears necessary to make special provisions. Some of the privileges of the former Rulers have been provided for by certain enactments. This Bill seeks to amend those enactments in the manner indicated below.
>
> 2. The immunity of a Ruler of an Indian State from criminal prosecution or civil suit under the Code of Criminal Procedure, 1898 and the Code of Civil Procedure, 1908 is being limited to acts and omission of such Ruler before the 26th January, 1950 (clauses 2 and 3 of the Bill), and by way of consequential change, Section 168 of the Representation of the People Act, 1951 is being omitted (clause 4 of the Bill).
>
> 3. The exemptions under the Wealth Tax Act, 1957 in respect of the one residence and heirloom jewellery of each former Ruler is being limited for his lifetime. Further, the exemption in respect of heirloom jewellery recognized by the Central Government is being made subject to conditions similar to those applicable at present in the case of heirloom jewellery recognized by the Central Board of Direct Taxes (clause 5 of the Bill).
>
> 4. The existing exemption under the Gift-tax Act, 1958 in respect of the gifts made out of privy purse is being withdrawn (clause 6 of the Bill).
>
> 5. It is also proposed to amend the Income-tax Act, 1967 to provide for exemption of any ex-gratia payments made by the Central Government consequent on the abolition of the privy

> purse and for the omission of the provision providing for exemption in respect of privy purse. Power is being taken to amend certain notifications issued under Section 60A of the Indian Income-tax Act, 1922 and continued by Section 297 of the Income-tax Act, 1961, with a view to suitably modifying the notifications insofar as they relate to exemptions in favour of Rulers (clause 7 of the Bill)."

One of the provisions which was amended was Section 5 of the Wealth Tax Act, 1957. Section 5 of 1972 Act stated :-

> "In the Wealth-tax Act, 1957, in Section 5, in sub-section (1),--
>
> (a) in clause (iii), for the words "any one building in the occupation of a Ruler declared by the Central Government as his official residence", the words, brackets and figures "any one building in the occupation of a Ruler, being a building which immediately before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was his official residence by virtue of a declaration by the Central Government" shall be substituted with effect from the 28th day of December, 1971;
>
> (b) to clause (iv), the following provisos shall be added, namely: --
>
> > "Provided that in the case of jewellery recognised by the Central Government as aforesaid, such recognition shall be subject to the following conditions, namely: --
> >
> > > (i) that the jewellery shall be permanently kept in India and shall not be removed outside India except for a purpose and period approved by the Board:
> > >
> > > (ii) that reasonable steps shall be taken for keeping the jewellery substantially in its original shape;
> > >
> > > (iii) that reasonable facilities shall be allowed to any officer of Government authorised by the Board in this behalf to examine the jewellery as and when necessary; and
> > >
> > > (iv) that if any of the conditions hereinbefore specified is not being duly fulfilled, the Board may,

> for reasons to be recorded in writing, withdraw the recognition retrospectively with effect from the date of commencement of clause (b) of section 5 of the Rulers of Indian States (Abolition of Privileges) Act, 1972 and in such a case, wealth-tax shall become payable by the Ruler for all the assessment years after such commencement for which the jewellery was exempted on account of the recognition.
>
> Explanation.--For the purposes of clause (iv) of the foregoing proviso, the fair market value of any jewellery on the date of the withdrawal of the recognition in respect thereof shall be deemed to be the fair market value of such jewellery on each successive valuation date relevant for the assessment years referred to in the said proviso:
>
> Provided further that the aggregate amount of wealth-tax payable in respect of any jewellery under clause (iv) of the foregoing proviso for all the assessment years referred to therein shall not in any case exceed fifty per cent of its fair market value on the valuation date relevant for the assessment year in which recognition was withdrawn;"

It may be stated here that clause (iv) in Sub-Section 1 of Section 5 of the Wealth Tax Act, 1957 before such addition stood as under:-

> "jewellery in the possession of any Ruler, not being his personal property, which has been recognized before the commencement of this Act by the Central Government as his heirloom or, where no such recognition exists, which the Board may, subject to any rules that may be made by the Central Government in this behalf, recognize as his heirloom at the time of his first assessment to wealth-tax under this Act."

20. In 1974, State of Kerala passed Travancore-Cochin Hindu Religious Institutions (Amendment) Act, 1974 amending *inter alia* Section 33 of TC Act as under:-

> "In section 33 of the principal Act, for the words "the Ruler of Travancore" and "the Ruler", in both the places where they occur, the words "the Government" shall be substituted."

Between 1974 and 1991, and even thereafter, various amendments were made to the TC Act but Chapter III of Part I of the TC Act has remained unamended.

21. On 19.07.1991, Sree Chithira Thirunal Balarama Varma, who had executed the Covenant as Ruler of the Covenanting State of Travancore, passed away. Since then, the appellant No.1 Uthradam Thirunal Marthanda Varma had been exercising all functions as "Ruler of Travancore" with respect to the affairs of the Temple till the Judgment was passed by the High Court in the present case.

22. Apart from the decision of this Court in ***Madhav Rao Jivaji Rao Scindia***[12], two cases having some relevance to the present controversy were dealt with by this Court during 1991-1994. Those cases were:-

a) On 28.11.1991 a Bench of three Judges of this Court rendered its decision in ***Revathinnal Balagopala Varma vs. His Highness Shri***

Padmanabha Dasa Bala Rama Varma (since deceased) and others[13] and connected matters. The properties which were described as private properties by the Ruler of Travancore, the details of which were part of the inventory appended to the Covenant entered into on 27.05.1949, were subject matter of ceiling proceedings taken under the Kerala Land Reforms Act, 1963. The proceedings resulted in declaration that 191.23 acres out of the holding held by the respondent No.1 in the said matter were surplus over the permissible extent. The decision was challenged by the members of the family submitting *inter alia* that those properties were *tarwad* properties and ought to be treated as belonging to different families which constituted independent units in the *tarwad* and as such, said properties were divisible amongst said appellant and respondents Nos.1 to 34 in equal shares. It was accepted by this Court that the succession would be governed by *Marumakkathayam Law*. It was observed in the leading judgment by N.D. Ojha, J.:-

> **"62.** That respondent 1 was a sovereign and the properties in dispute as held by the sovereign rulers from time to time were impartible has not been disputed by the learned counsel for the appellant before us. What has been urged by him, however, is that the properties in dispute belonged to a tarwad and were as such joint Hindu family properties and the attribute of impartibility applied to them because by custom only the eldest member of the family could be the ruler and to maintain his dignity and status it was necessary to make these properties impartible.

[13] 1993 Supp (1) SCC 233

> **63.** In this connection it has to be kept in mind that the mode of succession of a sovereign ruler and the powers of such a ruler are two different concepts. Mode of succession regulates the process whereby one sovereign ruler is succeeded by the other. It may inter alia be governed by the rule of general primogeniture or lineal primogeniture or any other established rule governing succession. This process ends with one sovereign succeeding another. Thereafter what powers, privileges and prerogatives are to be exercised by the sovereign is a question which is not relatable to the process of succession but relates to the legal incidents of sovereignty."
>
> **(**Emphasis supplied)

It was then concluded that the properties in Suit were not joint family properties, but were the personal properties of the said respondent No.1.

In his concurring opinion, Ranganathan, J. agreed with the conclusions arrived at in the majority judgment. It was observed by Ranganathan, J. as under:-

> **"9.** One of the factual aspects on which reliance is placed by the learned counsel for the appellant for claiming a family origin to the Ruler's properties is that the properties of the rulers have passed on from one ruler to the next even though the latter was not a direct lineal descendant. It is urged that, if the properties had been the personal properties of the ruler, they would have devolved on his personal heirs on his death. In my opinion, this is not a very helpful argument. All the properties held by a monarch or ruler devolve by the rule of primogeniture, there being no distinction in this regard between his personal properties and those held by him as ruler. But this need not necessarily be lineal primogeniture. It could be general primogeniture, the successor to the rulership being determined according to some prevalent custom. The properties will devolve on the successor so decided upon. The fact that the successor is determined on the basis of marumakkathayam law no doubt causes the properties to devolve on the next *karnavan* who succeeds to the rulership. But this does not necessarily lead to the inference that the properties held by the Ruler are the properties of a *tarwad*. The devolution is by

> succession from ruler to ruler and not one by way survivorship under the marumakkathayam law due to one *karnavan* taking the place of a deceased predecessor. This circumstance does not, therefore, in my opinion, establish the appellant's claim."
>
> (Emphasis added)

b) The validity of the Constitution (Twenty Sixth Amendment) Act, 1971 was under challenge in this Court and by its Judgment dated 04.02.1993 in ***Raghunathrao Ganpatrao vs. Union of India***[14] the Constitution Bench of this Court rejected the challenge. We shall deal with the challenge to said Amendment and the decision of this Court in ***Raghunathrao Ganpatrao***[14] later.

23. In the backdrop of these circumstances and developments, the stand taken by the State in the concerned Suits as well as in the Writ Petition may now be considered. It was submitted on behalf of the State that the Temple had always been accepted as that of Travancore Palace.

A) In its Written Statement filed in O.S. No.625 of 2007, the State had submitted:-

> "As per the TCHRI Act 1950, Chapter III is headed as 'Sree Padmanabha Swami Temple' by which sections 18 to 23 specifies the right of the Ruler of Travancore in owing and administering the temple. As per the said Act, Administration of Sree Padmanabha Swamy Temple and Sree Pandaravaka properties and all other properties and funds of the said temple is vested in trust in the Ruler of Travancore and under the control and supervision of the Ruler of Travancore by an Executive Officer

[14] 1994 Supp (1) SCC 191

appointed by him. The said Chapter III of the Travancore Cochin Hindu Religious Institutions Act emphatically declares the right of the Ruler of Travancore in owning and administering the Sree Padmanabha Swamy Temple. The provisions of the Travancore Cochin Hindu Religious Institutions Act 1950 backed by the Covenant is guaranteed by the Constitution of India in the Art 363(1).

7. It is humbly submitted that there are several great temples in Kerala, which are not under the administrative control of Travancore Devaswom Board or Cochin Devaswom Board or under any Devaswom Committees. Famous temples like Chakkulathukavu Bhagvathy Temple, Mannarasala Sree Nagaraja Temple are a few examples of such family temples. There are also many temples owned by private Trustees and local organization of Hindus too like the Attukal Bhagavathy Temple, Pazhavangadi Ganpathy Temple etc. Sree Padmanabha Swamy Temple is also such a family temple trust owned and managed by the Travancore Palace, and protected by the specific provision of the Travancore Cochin Hindu Religious Institutions Act.

8. It is submitted that the question whether the present Maharaja falls within the definition of Ruler of Travancore or not is a different matter not directly connected with the moot question. The only question to be considered is whether there is any public and compelling ground for the Government or Travancore Devaswom Board to take over the administration of Sree Padmanabha Swamy Temple. The legal technicalities and procedures arise only once the need for take over is established. The traditional and customary belief that has been for long recognized and accepted is that Sree Padmanabha Swamy Temple belongs to “Sree Padmanabha Dasas”, the Royal family head of Travancore Palace and they command high regard respect and esteem form the public. In the case of Sree Padmanabha Swamy Temple, there seems no valid reason for Government to interfere in the administration of the temple. The administration of the temple has not broken down nor is there any other allegation of a major nature, which forces Government to interfere in the administrative affairs of the temple. There is no vaild necessity or public purpose, which requires Government to take over the temple. In such a circumstances, Government do not desire to interfere or take over the administration of Sree Padmanabha Swamy Temple which is traditionally and historically accepted as the temples of Travancore Palace. In the light of the above facts

it is submitted that the averments raised in the suit may be dismissed.

Hence, it is humbly submitted that, since this suit is unnecessarily instituted, the Hon'ble Court may be pleased to accept the written statement filed by the Addl. 3rd respondent and the suit may be dismissed with costs to these defendants."

B) In its affidavit in reply in W.P. (Civil) No.36487 of 2009, the State submitted:-

"5. It is submitted that, as per the TCHRI Act, 1950, Chapter III is headed as Sree Padmanabha Swamy Temple by which Section 18 to 23 specifies the right of the ruler of Travancore in administering the temple. As per the provisions of the said Act, administration of Sree Padmanabha Swamy Temple and Sree Pandaravaka properties and all other properties and funds of the temple is vested in trust in the Ruler of Travancore and under the control and supervision of the Ruler of Travancore by an Executive Officer appointed by him. The said Chapter III of the TCHRI Act emphatically declares the right of the ruler of Travancore in administering the Sree Padmanabha Swamy Temple.

6. It is humbly submitted that there are several great temples in Kerala which are not under the administrative control of Travancore Devaswom Board or Cochin Devaswom Board or under any Devaswom Committees. Famous temples like Chakkulathukavu Bhagavathy Temple Mannarassala Sree Nagaraja Temple are a few examples of such temples which is run by particular family. There are also many temples owned by private trustees and local organisations of Hindus like the Attukal Bhagavathy Temple, Pazhavangadi Ganapathy Temple etc. Sree Padmanabha Swamy Temple is essentially a temple trust managed by the Travancore Palace as per the terms of Chapter III of TCHRI Act and protected by the specific provisions of TCHRI Act.

7. It is submitted that the question whether the 5th respondent falls within the definition of Ruler of Travancore or not, is a different matter. The question to be considered is whether – there is any public necessity and compelling ground for the

> Government to take over the administration of Sree Padmanabha Swamy Temple. It is submitted that all other questions pertaining to the legal technicalities and procedures arise only when the need for take over is established.
>
> 8. It is submitted that the traditional and customary belief that has been for long recognized and accepted is that Sree Padmanabha Swamy Temple belongs "Sree Padmanabha Dasas", the royal famiy head of Travancore Palace and they command high regard, respect and esteem from the public In the case of Sree Padmanabha Swamy Temple, there seems no valid reason for the Government to interfere in the administration of the temple. It is submitted that, the administration of the temple has not broken down nor is there any other allegation of a major nature which forces the Government to interfere the administrative affairs of the temple. There is no valid necessity or public purpose which requires the government to take over the temple. In such a circumstance, the Government do not desire to interfere or take over the administration of the Sree Padmanabha Swamy Temple which is traditionally and historically accepted as the temple of Travancore Palace. It is submitted that the Government have already filed a detailed written statement in OS 625/2007 pending on the file of Principal Sub Court, Thiruvananthapuram. None of the grounds raised in the Writ Petition are sufficient to hold that the interference by the government in the administration of the temple is called for.
>
> So, it is most humbly prayed that this Hon'ble Court may be pleased to uphold the above contention and dismiss the above writ petition."

24. After considering rival submissions, the High Court in its judgment under appeal observed:-

> "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 recognized as a public Temple run with it's 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 persons 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 petitioners 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."

With regard to the submission based on Article 363 of the Constitution, it was observed:-

> "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 abovereferred 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."

It was further observed:-

> "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 Roayl family of Travancore can only be styled as absured because in several judgments of this court this Great Temple is recognized 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 recognize 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 recognized 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, 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."

In paragraphs 8 and 9 the High Court observed:-

"**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 recognized as a structure of Archaeological 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/ shebaits/ 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 has not 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 thing 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 Deity 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 it's treasures are worth-preserving and 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) Nol.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 it's antique value and it's 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 Lakshmibhai, 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."

With these conclusions, the directions as quoted hereinabove were issued by the High Court.

25. Challenging the decision of the High Court, the appellants in the Special Leave Petition, from which the first of the instant Appeals arise, *inter alia*, raised following grounds :-

> "C. The petitioner submits that the temple and its properties, as prescribed by the Covenant dated 1st July 1949, ought to remain vested in Trust and the Petitioner, being the senior-most male

member of the Royal family, will hold and administer the same as the Trustee of the Temple, through an Executive Officer.

D. As opposed to the tenor, in which the entire impugned judgment proceeds, the Petitioner, in the past, has donated considerable amount of money, as and when it was required, for the smooth functioning of the temple and conduct of rituals and festivals. It is submitted that the Petitioner has always supplied the deficit as and when required by the temple. In fact, in 1686 AD, when the entire temple was burnt to the ground, the predecessor of the Petitioner, Marthanda Varma, rebuilt the temple in its entirety over a period of 15 years.

… … …

F. Because the Division Bench has failed to notice that the Sree Padmanabhaswamy Temple and its properties (also called "Sree Pandaravaka") remained vested in the presiding deity of the Temple, Sree Padmanabha, even before the *Trippadi Danam* of the State (that is, surrender of the State to the Lord by H.H. Anizham Thirunal Marthanda Varma Maharaja in the year 1750). The hereditary trusteeship of the Temple remains with the Ruler of Travancore, and the original concept of trusteeship remains unaffected; this being fortified by the absence of any enactment depriving the Family of its trusteeship.

… … …

Despite a large proportion of these endowments having been made by the erstwhile Royal family of Travancore, and that Lord Padmanabha is considered the family deity of the erstwhile Royal family, the Petitioner asserts that the Padmanabhaswamy temple is a public temple, and no claim can probably be made by the Petitioner or anyone to owning the temple or its treasures. The Petitioner as the Padmanabhadasa merely seeks to recover the right as a trustee of the temple to manage and administer it, which has unfortunately been taken away by the impugned judgment and vested, in the State Government as the successor 'Ruler'. The Petitioner retains the right to perform all the traditional rituals and ceremonies in the same manner as has been performed for hundred years."

26. In its Order dated 02.05.2011, this Court directed:-

> "Interim stay of direction (i) of the 2 impugned judgment which directs taking over the assets and management of Sree Padmanabhaswamy Temple, Thiruvananthapuram.
>
> Interim stay of directions (ii) to (iv) of the impugned judgment subject to the following interim directions:
>
> (a) There shall be a detailed inventory of the articles/valuables/ornaments in Kallaras described as (a) to (f) in the Second Schedule to the Plaint in O.S. No.625/2007 on the file of the Sub-Judge, Thiruvananthapuram. The inventory shall be held in the presence of the following observers:-
>
> (i) Two observers appointed by this Court namely, Justice M.N. Krishnan and Justice C.S. Rajan, retired Judges of Kerala High Court.
>
> (ii) The first petitioner and second petitioner.
>
> (iii) A senior officer of the State Government, namely the Secretary, Devaswom Department or his nominated representative.
>
> (iv) A senior officer nominated by the Secretary, Department of Archeology, Ministry of Culture, Government of India, who is stationed at Kerala.
>
> (v) The PIL petitioner (first respondent).
>
> Justice M.N. Krishan shall be in charge of organising the inventory, fixing of schedules. The entire expenditure of inventory shall be met by the petitioners. He is also authorised to seek police security at the time of such inventory. The observers shall decide upon the procedure and documentation of the inventory including videographing and photographing the articles.
>
> (b) In regard to the articles in Kallaras (c) and (d) used for regular rituals and the ornaments etc. in Kallaras (e) and (f) said to be in the custody of Periya Nambi and Thekkedom Nambi, the existing practices, procedures and rituals may be followed in regard to the

opening and closing of the Kallaras and using the articles therein. As far as Kallaras (a) and (b), which is reportedly not opened for more than a century, they shall be opened only for the purpose of making inventory of the articles and then closed and sealed again.

(c) The inventory shall be filed in this Court and copies of the inventory be given to all participating parties and observers.

(d) The existing temple security shall be further strengthened by additional security from the local police.

(e) The first petitioner and his family shall be entitled to participate in all temple festivals and rituals as hitherto before."

27. The Order passed by this Court on 21.07.2011 noted the stand of the State and of the appellants as under:-

"The State of Kerala in its affidavit dated 14.7.2011 has declared its stand on the issues as follows: -

Ownership :

All articles found in the Kallaras of Shree Padmanabha Swami Temple (including objects of value gold ornaments, precious stones and antiques) belong to the deity (Temple) and neither the State Government nor the family of ex-rulers of Travancore can have any claim over them.

Storage/Exhibition :

The ornaments/antiques are not suitable or sufficient for creating a separate museum. All the articles being property of the temple, should remain within the confines of temple premises. It is neither practical nor advisable to remove them from the temple environs.

Security :

A senior officer of the rank of Additional Director General of Police has been put in special charge of the security of the temple. A control room has been made operational. A special team of

Police officers has been entrusted with the task of studying the security requirements. Ensuring adequate security for the temple is the primary responsibility of the government and it will do everything necessary for acquisition of the state-of-the art security systems (which are least obtrusive and most effective) and install them shortly. The temple will be guarded round-the-clock. Commandos have been posted to guard the gates.

2. The petitioners (Sri Marthanda Varma the sole trustee and the Executive Officer of the temple) have expressed their views in the affidavit dated 14.7.2011 filed by the Executive Officer:-

Ownership :

All articles, ornaments, valuables, precious stones, antiques without exception found in the Kallaras belong to the Presiding Deity of Shree Padmanabhaswamy Temple and neither Mr. Marthanda Varma nor his family members have any claim over them. Mr. Marthanda Varma merely administers the property/assets of the deity and the temple as the Trustee.

Storage/Exhibition :

The articles found in Kallara 'A' can be segregated into three categories:

(i) Articles having historic/heritage/artistic value considered "priceless", can be kept in the Kallara itself, and taken out periodically for being exhibited on special occasions, within the temple premises for the benefit of the devotees and general public.

(ii) Even articles which have only some historic/ heritage/artistic value, and cannot be considered to be 'priceless' shall also be kept in the safe custody in the Kallara.

(iii)Articles having monetary value but no historic/heritage/artistic value, could be disposed of and the proceeds used for purchasing immovable properties, for renovation and maintenance of the temple and for education including establishment of a 'Veda Pathasala' and a 'Thanthirika Peedom' for imparting training and grooming temple priests.

Inventory :

Videography and photography of the articles in Kallara 'A' may be avoided, as the inventory has already been completed. But if it is found that videography/photography is necessary for completing the inventory, the same may be carried out strictly under the supervision and the films/cartridges shall be deposited in a sealed cover so that unauthorized copies are not made.

As the primary object of the inventory is to ascertain what is available and not disposal or sale, there is no need to have a valuation. However the services of a conservationist or expert in antiques may be availed for categorizing the articles and completing the inventory in a scientific manner.

Security arrangements :

While installing security systems, in particular CCTVs and other electronic devices, care should be taken in regard to two aspects. First is that the customs/traditions of the temple should be respected and taken note of. Second is that worship by the devotees should not be disturbed. The Police personnel on security duty, when inside the temple, should be unobtrusive and comply with the dress code of the temple.

… … …

4. After considering the submissions made during arguments and the suggestions in the affidavits, we find that action is required in the following areas :

(a) A detailed inventory of the articles in Kallaras A and C to F with videography/photography shall have to be completed under the supervision of an Expert Committee. The videographer/photographer employed for this purpose shall have security clearance from the local Police authorities.

(b) The services of Experts/Conservationists shall have to be availed so that handling the articles at the time of inventory or disturbing the environment in which they were stored in the Kallaras for centuries does not affect the articles.

(c) Adequate and proper arrangements will have to be made for security. This would involve not only policing the premises but also having security measures/systems as also provision of a

strong room/vaults/steel lining in the Kallaras with the assistance of a security expert.

5. To achieve the aforesaid results, we hereby constitute the following Expert Committee to advise regarding inventory, conservation and security :

(1) Dr. C. V. Ananda Bose, : Co-ordinator
Director General of National Museum and
Vice-Chancellor,
National Museum Institute
New Delhi.

(2) Prof. Dr. M.B. Nair, : Member
Head of Conservation Department,
National Museum Institute
New Delhi.

(3) Nominee of the Director, Archaeological : Member
Survey of India (from its science/research wing).

(4) Nominee of the Governor of Reserve Bank of India :Member
who is an Expert from its security wing.

(5) The Executive Officer of the Temple : Member

6. The said Expert Committee is entrusted with the following responsibilities:

(a) To organize the inventory by videography/ photography of the articles in Kallaras A, C to F, and supervise such inventory and arrange for proper storage of the articles in the respective Kallaras after completion of the inventory.

(b) To examine and categorise the articles into three groups: (i) Articles/ornaments having historic/heritage/ artistic/antique value. (ii) Articles that are required for regular use in the temple for religious purpose. (iii) Articles and ornaments which cannot be considered to be having any historic/heritage/artistic/antique value, but having merely a monetary value.

(c) To draw up long term and short term measures for preservation, conservation, maintenance of the articles/ antiques in Kallaras of the Temple.

> (d) Prepare a scheme for providing security measures in the temple premises and in the Kallaras.
>
> (e) Examine whether any of the articles are worthy of exhibition for the benefit of the devotees and if so examine the feasibility of creation of a high security museum within the temple premises or the adjoining museum.
>
> (f) Examine and give an opinion whether it is necessary to open Kallara 'B' at this stage.
>
> 7. In view of the constitution of the said Expert Committee, there is no need to continue the large Committee of Observers. In place of the seven member Observer Committee earlier appointed, the following smaller Overseeing Committee is appointed to supervise and guide the working of the Expert Committee and to complete the inventory and continue as Observers :
>
> (i) Justice M.N. Krishnan. -Co-ordinator
>
> (ii) Mr. Marthanda Varma (or his special nominee) - Member
>
> (iii) Secretary, Devaswom Department of Government of Kerala (or his special nominee)." - Member

28. The Expert Committee constituted by this Court made an interim report, and furnished some additional information, based on which following directions were passed by this Court in its Order dated 22.09.2011:-

> "We have examined the interim report dated 17.8.2011 of the Expert Committee and the additional information submitted on 12.9.2011. Having considered the said report and the submissions of the parties, the following interim directions are issued:

SECURITY MEASURES

1.1) The Expert Committee has identified thirteen security issues and suggested sixteen security measures to be put in place. A copy thereof has already been made available to the State Government and the Temple Administration. The state government has submitted the Security Technical Committee Report putting forth an Integrated and Multi-Layered Security System for the Temple, for our perusal. In view of security concerns, we do not propose to extract either the security issues raised or the security measures suggested by the Expert Committee or the secured measures proposed by the state government.

1.2) The state government has submitted that it has the expertise and capability to provide the necessary security measures; and it is ready and willing to provide the same at its cost. The state government has assured that it would spare no effort or cost to provide the best security cover and has stated that there is no need to indent the service of any central security force like CRPF as suggested by the Expert Committee, for strengthening the security. Having examined the Security Technical Committee Report furnished by the state government and its assurance to put in place an Integrated Multi-layered Security System for the Temple in a time-bound manner, we are satisfied that the state government would be in a position to execute the security plan. There is no need for the state government to requisition the services of any central security agency.

1.3) The state government shall take note of the sixteen security measures that have been suggested by the Expert Committee in its Interim Report dated 17.8.2011 and promptly implement the Integrated Multi-layered Security System explained and suggested in its Security Technical Committee Report. In implementing the security system, the state government will take note of temple traditions, customs and practices, and accommodate the views of the temple administration as far as possible and feasible.

WORK PLAN

2.1) The Expert Committee has suggested 'Digital Archiving of Temple Antiques' (for short 'DATA') to achieve the following : (i) Recording of detailed information after examination and assigning an Antique Identification Number/Code; (ii) to store the information in a computerized Data Base; (iii) recording of a 3D

> image of the object and link it to the data base. The Expert Committee is permitted to implement the said 'DATA' procedure.
>
> 2.2) The Expert Committee has recommended appointment of 6 Kerala State Electronic Corporation (KELTRON), a state government undertaking with technical expertise from Vikram Sarabhai Space Centre (VSSC), an unit of Department of Space, for implementing the work plan. Having regard to the security concerns and approval of the said agency by the state government, we accept the suggestion that the 'DATA' work should be executed by the said government undertaking instead of inviting tenders from private agencies.
>
> 2.3) KELTRON has estimated the cost of executing the work to be Rs.3,16,35,000/- made up of Rs.1,65,35,000/- for hardware, Rs.40,00,000/- for software, and Rs.1,11,00,000/- for services and miscellaneous items. The cost appears to be very high and far exceeds the figures shown in the Interim Report. The feasibility of borrowing/hiring the equipment can be considered. The software cost and servicing cost requires drastic reduction. However, KELTRON being a state government undertaking and VSSC, the technical expert being a unit of Department of Space, the Expert Committee may proceed to entrust the work to KELTRON after involving the state government in the process of negotiations relating to cost and the schedule of payment. We do not propose to approve the said price. As the state government has to bear the expenditure involved, it will take the final decision on the pricing after negotiations, in consultation with the Expert Committee. The state government shall nominate a Nodal Officer for this purpose, failing which the Secretary, Devaswom Department shall be the Nodal Officer."

29. On 23.08.2012, Mr. Gopal Subramanium, learned Senior Advocate was appointed *Amicus Curiae* to assist the Court. The learned *Amicus Curiae* in his report dated 01.11.2012 made suggestions with regard to conservation, renovation and restoration. During the course of his report, the learned *Amicus Curiae* made the following observations:

"**29.** In this context, it may be necessary to mention that the Sree Padmanabha Swamy Temple is an integral part of the traditions of the Royal family of the erstwhile State of Travancore and also the people of Kerala (including the residents of the ancient city of Thiruvananthapuram). It is interesting to note that Ashwathi Thirunal Gouri Lakshmi Bayi (one of the members of the Royal family), in her book Sree Padmanabha Swamy Temple published by the Bharatiya Vidya Bhavan, interestingly refers to the Prakrit version and the final Sanskrit version of Sree Anandapuram from Syanandoorapura. The Sree Padmanabha Swamy Temple is connected to twenty four holy teerthams and is also linked with certain other temples, many of which are in the State of Tamil Nadu. It may be noted that even today, Mathilakom records or the palm leaves scrolls which recorded the ancient history of the Temple and that of the erstwhile State of Travancore are available in the Temple premises and in the Kerala State Archives.

30. It must also be noted that the idol of Lord Padmanabha is made using *katu sharkara yogam* (a complex mixture of 8 natural ingredients) in which 12008 Salagramas were filled in. This idol made using *katu sharkara yogam* was consecrated in the year 1739 under the aegis of the erstwhile ruler of Travancore, Veera Marthanda Verma (1706-1758). Salagrama is not a mere stone but a stone of longstanding tradition and spiritual potency in which it is believed that Hari or Lord Vishnu resides (hence, *yatha salagrame hari*). Thus, Eashwara or god manifests Himself in saguna forms in various ways – in the Salagrama as Vishnu, in the lingam as Shiva and in the chakra as Devi (Mother Goddess). Usually, when 12 salagrama shilas are worshipped, it equals the potency of a mahakshetram or a great temple. Therefore, the sanctity of Sree Padmanabha Swamy Temple is a thousand fold.

… … …

34. At this juncture, it would be appropriate to mention that the Travancore Royal family is also called the Venadu Raja Vamsha which is the off-shoot of Chera roya lineage and the Ayi royal dynasty, and has always regarded Lord Padmanabha Swamy as their tutelory Deity and this is confirmed by many historical records where Lord Padmanabha is addressed as 'yadavendrakuladaivatam' or the family Deity of yadavakshatriyas (the present Travancore royalty); thereby confirming that Sree Padmanabha Swamy is the 'kuladaivta' of the entire family. It may be noted that devotees other than royalty

have worshipped Lord Padmanabha Swamy as their 'ishta daivta' or God of one's personal choice.

35. It was in 1731 A.D. that the first King of the erstwhile Travancore Royal family, Sree Veera Marthnda Varma, was anointed. He was succeeded by Rama Varma (1758-1798). Moreover, the Royal family consisted of deeply devoted members who were dedicated to the Temple and who believed that their lives centred around Sree Padmanabha Swamy. In 1750 A.D., the entire State of Travancore was gifted to this Deity by a Deed and the Rulers became servants of the Lord, calling themselves as Padmanabhadasa. It may also be noted that many of the Maharajas were great composers of shlokas as well as music. In fact, many of the Rulers were protectors of the Vedas and the vedic tradition. Further, the Temple was governed by a council of trustees called Ettara Yogam headed by the King.

36. One of the greatest Kings of the Royal family was Sri Swathi Thirunal Maharaja Rama Varma (1813-1846) who was a great patron of the arts, literature, music and modern science. He was an extraordinary King who presented an incorruptible system of governance, framed the first code of regulations of Travancore, advanced English education, contributed to a collection of rare manuscripts and undertook a large number of social welfare measures. In fact, Sri Swathi Thirnal is regarded as one of the four great vidwans of Carnatic music – they being Muthuswamy Dikshitar, Thyagaraja, Shyamasastry and Swati Thirunal. The Kings including Sri Swathi Thirunal donated their personal wealth to the Temple and, as recorded by Dr. Ventkata Subramanya Iyer in his brilliant book 'Swathi Thirunal and his music', during his eventful life, once when one of his courtesans presented a varnam in his honour, the King directed that it should not be used because only Lord Padmanabha Swamy must be lauded with music.

… … …

38. In the submission of the Amicus Curiae, this Temple is one of the most ancient temples of Maha Vishnu and is priceless. The Amicus Curiae however noticed that urgent measures are required for the protection, preservation as well as the proper and effective management of the Temple. Thus, it may be added that the sprit underlying the judgment of the Kerala High Court as well as the various interim orders passed by this Hon'ble Court is to

preserve, protect and manage the Temple along with inventorying all the treasures which are contained in the Temple.

39. The Amicus Curiae noted that the various Kallaras or vaults are an integral part of the Temple structure itself. In order to show the same, the Amicus Curiae is annexing a copy of a plan which indicates where Sree Padmanabha Swamy in the Sreekovil (sanctum) is residing and there is a mandapam outside and by the side of Narasimha Murthy is Kallara 'A' adjoined by Kallara 'B'. While Kallaras 'C' and 'D' are on the other side of the Sreekovil. Kallaras 'E' and 'F' are close to the sanctum. The said map / plan is annexed to this report and marked as Annexure B.

40. The treasures which are contained in these Kallaras are the continued offerings of the Royal family including the offerings of other devotees. It may also be noted that the priceless jewels are intended for alankara of the Lord, gold ornaments, gold utensils and many priceless treasures are also to be found in these Kallaras, including priceless gems and coins. Thus, there can hardly be any doubt that all the treasures of the Temple belong to the Temple Deity, i.e. to Sree Padmanabha Swamy and nobody can claim otherwise (in fact, in the temples of South India, it is customary for people to offer various ornaments of gold and silver in temples which are then kept separately in those temples). No person must be allowed to take the riches of the Temple outside for any extraneous purpose. The Amicus Curiae is of the opinion that considering the stand of the State of Kerala as reflected in its written statement filed in O.S. No.625 of 2007 before the Civil Court in Thiruvananthapuram and the interaction which the Amicus Curiae had with the Chief Minister, it is clear that the State would not do anything by which any of the treasures of the Temple are utilised for any extraneous purpose or for any prupose unconnected with the Deity/Temple."

30. In its Order dated 13.02.2013, this Court observed:-

"2. Section 20 of the Travancore Cochin Hindu Religious Institutions Act, 1950 provides that there shall be a committee to advise the Ruler of Travancore in the discharge of his functions. The Committee shall be known as "Sree Padmanabhaswamy Temple Committee" and composed of three Hindu members nominated by the Ruler of Travancore. The tenure of the members of the Committee may be determined by the Ruler.

> 3. We are informed by Mr. K.K. Venugopal, learned senior counsel, that the Committee on January 8, 2013 resolved that the Trustee may appoint a nominee of his choice to report the conduct of administration and to act according to the directions by the Trustee from time to time.
>
> 4. Pursuant to the above resolution, we are further informed that the Ruler (trustee) has nominated Mr. Adithya Varma as his honorary nominee to report on the conduct of administration of Sree Padmanabhaswamy Temple and to act according to the directions issued from time to time.
>
> 5. Mr. K.K. Venugopal also informed us that within 10 days from today, the Executive Officer shall be appointed along with one Assistant Executive Officer and as suggested by Mr. Gopal Subramanium, learned Amicus Curiae, Mr. Gautam Padmanabhan shall be appointed as Assistant Executive Officer.
>
> 6. We accept the above statements of Mr. K.K. Venugopal."

By its Order dated 11.12.2013, this Court appointed a Conservation and Restoration Committee to coordinate with Sri Kanippayyoor Sankaran Namboothiripadu and Thantri of the Temple to supervise the conservation, restoration and renovation work.

After the death of the original appellant No.1 – Uthradam Thirunal Marthanda Varma, his successor Moolam Thirunal Rama Varma was impleaded in his place vide Order dated 09.04.2014.

31. On 15.04.2014, a further Report was filed by the learned *Amicus Curiae* along with his recommendations touching upon various issues and topics

including General Administration, Conservation of Structures within the Temple, Security Arrangements, Special Audit of the Temple. He suggested that Special Audit of the Temple be conducted for the last 25 years. He also made recommendations with regard to the security of Temple Property, contents of Kallaras.

32. An Administrative Committee came to be constituted as reflected in the Order dated 24.04.2014. The Order also directed special audit of the Temple to be conducted. The Order stated:-

> "Mr. K.K. Venugopal, learned senior counsel for the petitioners in SLP (C) Nos. 11295 of 2011 and 12361 of 2011 submits that the Executive Officer and Administrative Officer of the Sree Padmanabha Swamy Temple (for short "Temple") have voluntarily desired to go on leave for four months.
>
> **2.** We accept his statement.
>
> **3.** Mr. K.N. Satheesh, IAS, Director, Higher Secondary Education, Government of Kerala is, for the time being, appointed as the Executive Officer of the Temple until further orders.
>
> **4.** By way of interim measure, an Administrative Committee to discharge day-to-day functions relating to the Temple is constituted. The Administrative Committee shall comprise of:
>
> (i) District Judge, Thiruvananthapuram, Kerala, if he is Hindu and if he does not happen to be Hindu, then senior most Additional District Judge of that District. The District Judge or Additional District Judge, as the case may be, shall be the Chairman of the Administrative Committee.
>
> (ii) Tantri S/Shri Satish Namboodiri, Saji Namboodiri, Kuttan Namboodiri.

(iii) Chief Nambi of the Sree Padmanabha Swamy Temple.

(iv) Two members to be co-opted by the District Judge, one of whom shall be co- opted in consultation with the Government of Kerala.

5. The keys of all the kallaras except kallaras "E" and "F" shall be handed over to the Chairman of the Administrative Committee forthwith.

6. The keys of the two Mudalpadi rooms (designated in the Report as Kallaras 'G' and 'H') shall also be handed over to the Chairman of the Administrative Committee forthwith.

7. The Administrative Committee shall immediately address the following issues:

(a) Protection of Kannikaipura and its surveillance by installing CCTV cameras and other related issues;

(b) The collection of Kanikkai shall be accounted at least once a week, preferably every Saturday in the presence of the Chairman of the Administrative Committee;

(c) Cleaning of the passage above the Kallaras within the Sreekovil;

(d) Cleaning of Temple tanks (Mitranandapuram and Padmateertham) in a time bound manner by a credible agency;

(e) Improvement in living conditions of police personnels guarding the Temple;

(f) Any other issue which may be brought to the knowledge of the Chairman, Administrative Committee by the learned Amicus Curiae or State Government or Trustee.

8. A special audit of the Temple and its properties shall be conducted as early as may be possible, preferably by Shri Vinod Rai, former Comptroller and Auditor General of India. He will be at liberty to take services/assistance of any other person/persons in completion of this task.

> **9.** Until further orders, no property of the Temple shall be alienated or transferred or disposed of in any manner whatsoever."

33. On 06.11.2014, an affidavit was filed by the Chief Secretary of the State submitting:-

> "6. It is submitted that Shree Padmanabaswamy Temple ("Temple"), was initially part of the erstwhile Princely State of Travancore and successive Rulers in the erstwhile Princely State of Travancore, considered Lord Padmanabha as their deity. On 16.04.1960, the Travancore-Cochin Hindu Religious Institutions Act, 1950, was enacted on the basis of Article 8 of the Covenant dated 01.07.1949 entered into between the Rulers of Travancore and Cochin for the formation of the United State of Travancore and Cochin.
>
> … … …
>
> 8. It is thus submitted that, the administration of the Temple, Sree Pandaravaka properties, all other properties and funds of the Temple were vested in Trust with the Ruler of Travancore.
>
> 9. It is submitted that Sri Chithira Thirunal Maharaja, was the last Ruler and after his demise on 19.07.1991, the administration of the Temple was assumed by his brother, the late Sri Marthanda Varma, who was the Original Petitioner before this Hon'ble Court, however now deceased.
>
> … … …
>
> 12. Further, it was also submitted before the Sub-Court by the Government that there are so many Temples in the State, for instance Attukal Bhagavathi Temple in Trivandrum, Chakkulathu Kavu in Alappuzha District etc. which are managed well by private or family trusts. Therefore, the Government endorsed and supported the stand of the Defendant therein, i.e. the erstwhile royal Family represented by Sree Marthanda Varma, that the administration of the Temple shall continue to be conducted by the erstwhile royal Family.
>
> … … …

18. It is submitted in the affidavit dated 23.04.2014, Sree Mulam Thirunal has *inter alia* informed this Hon'ble Court in paragraph 8 of the said affidavit as follows:-

> "It is only when Valiya Thampuram Sri Utharadom Thirunal Marthanda Varma decided to file the Special Leave Petition against the present impugned Judgment of the High Court, that he was strongly advised to give up his stand that the temple is a private temple which vested in the family, and, on the other hand, to take the stand that the temple is a public temple…"

… … …

20. It is submitted that with the coming into force of the Instrument of Accession referred to above, as held by the Hon'ble High Court in the impugned judgment, the term "Ruler" as appearing in Section 18 in the Travancore-Cochin Hindu Religious Institutions Act and Article 290-A of the Constitution of India is not a heritable right to be continued *ad infinitum.* With the passing away of the last Ruler Sree Chithirathirunal Balaramavarma, Ruler and Rulership are no more valid and legally sustainable.

21. However, it is categorically submitted that at no point of time has the Government claimed the wealth to be Government property, nor do they intend to lay claim ownership of the said property. On the other hand, the Government states that the wealth is exclusively the temple property and it is inalienable except for the benefit of the temple and the devotees of the temple.

… … …

24. The answering respondent is also prepared to examine the feasibility of bringing forward legislation preferably on the lines of the Guruvayur Devaswom Act, 1978 for the said purpose. As per the said Act, there is a nine member Committee called the Guruvayur Devaswom Managing Committee of which, three are permanent members. The three permanent members include the Zamorin Raja of Calicut, The Karanavan of Mallissery Illam (head of the Mallissery family) and the Thanthri. Six non-permanent members are nominated by the Hindus among the Council of Ministers, which includes a representative of the

> employees of the Devaswom and a person belonging to the scheduled caste. The Government is ready to carry out the necessary study in this regard.
>
> 25. It is submitted that if the Guruvayur model is replicated in the case of Sree Padmanabha Swami Temple, then the erstwhile royal family of Travancore can be given representation in the Managing Committee by reserving one slot on a permanent basis and the Thanthri could be the other permanent Member."

34. The Order dated 05.05.2015 passed by this Court noted the submission of the learned *Amicus Curiae* that an audit be conducted with regard to the account of Padmanabhaswamy Temple Trust and its properties. It also noted the submission of appellants that a special audit for the period had already been conducted, but he would not have any objection in cooperating with Mr. Rai. The Order, therefore, directed:-

> "In the circumstances, therefore, we direct that a copy of the audit report filed on behalf of the Padmanabhan Swamy Trust in this court for the period 01.04.2008 shall be forwarded to Mr. Rai for his perusal and evaluation. We further direct that in case Mr. Rai upon consideration of the audit already conducted is of the opinion that a fresh/special audit needs to be conducted for the period 01.04.2008 onwards he shall be free to undertake that exercise in which case the Trust shall make available all such information and record as may be necessary for completion of that exercise. Mr. Rai will also do well to raise any query that may be relevant for completion of the audit to enable the trust to answer them. We extend the time for completion of the audit till 31.12.2015.
>
> We permit the State Government to approach the Expert Committee for scaling down the staff deployed for inventorisation and archiving of antiques and artifacts by

> KELTRON and Expert Committee who may upon consideration of any such request issue appropriate orders in that regard.
>
> Mr. Rai has in terms of communication dated 1.04.2015 raised a demand for a sum of Rs. 45,00,000/- representing the total fee including expenses etc. for the period up to December, 2015. There is no objection by any one appearing for the parties to the release of the said amount in favour of Mr. Rai. We accordingly direct the Administrative Committee to release the amount billed by Mr. Rai."

35. The Order dated 09.10.2015 noted the submissions with regard to customary form of awakening Lord Padmanabhaswamy in the morning, and left the issue to be decided by the religious head of the Temple as under:-

> "… …Having heard learned senior counsel for the parties on this aspect of the matter, we are of the opinion that the issue could be more appropriately left to be examined and resolved by the religious head of the temple. It is common ground that Tharananellur Sri Parameswaran Namboodiripad, is the Chief Thanthri of the temple. In our opinion, and as fairly conceded by learned senior counsel appearing for the parties including Mr. Subramanium, learned amicus curiae, all matters concerning permissible rituals, customary practices and pujas to be performed including the mode of awakening the Lord in the morning ought to be left to be determined by the Chief Priest (Thanthri) Tharananellur Sri Parameswaran Namboodiripad in his capacity as the Chief Thanthri of the temple. We accordingly do so. We make it clear that Mr. Subramanium has categorically stated that he had never mandated any change in the customary practices in the temple and that it is a matter that can indeed be left to the Chief Priest (Thanthri) Tharananellur Sri Parameswaran Namboodiripad, mentioned above to determine. It follows that the question whether verses "Venkatesha Suprabhatam" should or should not be recited in the morning for awakening the Lord is a matter left to be determined by the Chief Priest (Thanthri) Tharananellur Sri Parameswaran Namboodiripad. … …"

36. In March 2016, Report about Special Audit of Sree Padmanabhaswamy Temple, its properties and Sree Padmanabha Swamy Temple Trust was filed by Mr. Vinod Rai, running into two volumes along with "Major Audit-Observations and Recommendations".

The Administrative Committee appointed by this Court resolved on 13.06.2017 as under:-

> *"the Committee is in the darkness on the financial position of the temple. Quarterly budget proposals should be prepared and communicated to the Committee. Similarly, monthly accounts statement should be placed before the Committee before 10th of every succeeding month. The matter will be communicated to the Executive Officer."*

The resolution was communicated to the Executive Officer.

37. The Order dated 04.07.2017 passed by this Court noted that by consensus Mr. V. Ratheesan, IAS, was nominated as Executive Officer and he assumed charge on 18.06.2017. Said Order recorded the earlier directions issued on 09.05.2017 with regard to the essential repairs and while constituting Conservation Committee and Selection Committee, following directions were issued:-

> "5. Having given our thoughtful consideration to the rival contentions advanced by the learned counsel, we are of the view that the security arrangements presently in place should be allowed to continue with the rider that the entire responsibility of

securing the properties and the assets of the temple will remain with the Superintendent of Police, who is the person in-charge of the responsibility.

6. Mr. Gopal Subramanium, learned amicus curiae further pointed out that the working relationship between the Administrative Committee and the Executive Officer needs to be clearly defined.

7. During the course of hearing, learned counsel for the rival parties were agreeable that this Court clarifies, that the Administrative Committee shall be in-charge of taking policy decisions as well as in regard to the manner of functioning of the temple, and that, the directions issued by the Executive Committee shall be implemented by the Executive Officer. It was also submitted that the Executive Officer be made Member Secretary of the Administrative Committee - to whom he should be answerable. We order accordingly. We also hereby further direct, that the Executive Officer as Member Secretary, shall discharge his duties wholetime. In this behalf, we would make a request to the State of Kerala to approve the aforesaid arrangement within two weeks from today.

8. It was also submitted by the learned amicus curiae, that even though there is a process in vogue whereby accounts of the temple and the trust are maintained, yet they are not subjected to any supervision and control. It was pointed out, that the appointment of a financial controller would lend credibility to the process of incurring expenses and maintenance of accounts. On examining the instant issue with the concurrence of learned counsel representing the rival parties, we request the State of Kerala to nominate a panel of three officers from the Indian Audit and Accounts Service, to overlook the audit and accounts of the temple, and to submit quarterly reports to the Administrative Committee, for implementation of such suggestions as may be made in the report. We also hereby direct the same officer, nominated by the State Government as has been approved by the Administrative Committee, to audit the accounts of Shri Padmanabhaswamy Temple Trust and to submit similar reports to the Administrative Committee. We, therefore, hereby request the State of Kerala to submit its panel, for the consideration of the Administrative Committee, within four weeks.

9. The next contention of Mr.Gopal Subramanium, Senior Advocate and learned amicus curiae was, that an immediate inspection of the Moolabimbams needs to be carried out, so that

effective repairs can be made to the deity before the onset of Dakshinayana (which commences from 15/16.07.2017). In this behalf, we are aware of the order passed by us on 09.05.2017 wherein we had recorded as under:

> "4. A Committee of experts comprising Vezhapparambu Namboodripad, Satheesh Ezhumtholi and Cheruvally would undertake a complete inspection of the Moolabimbams and advise a suitable course of action. This should be done in conjunction with Kanipayyoor Shri Krishnan Namboodripad. The Kadusarkara repairs and repairs to the Moolavigrahas, referred to in the orders of this Court dated 20.03.2017 and 18.04.2017, must be undertaken conjointly by the said persons, in consultation with the Tantris, wherever necessary. They shall mutually agree on a Chairman, who may be made responsible for the work undertaken.
>
> 5. In the background of the above, the amicus curiae submitted, that the inspection and repairs may be permitted to be undertaken conjointly by the said persons. They will be at liberty to appoint any artisan/expert, who may have knowledge of Kadusarkara for the said purpose. The same should be undertaken at the earliest, without compromising with any customs and rituals at the Temple. We accept the submissions recorded above, and order accordingly."

10. Since a request to carry out repairs of the deity was personally made by this Court, we would expect the experts to carry out the responsibilities vested in them, so that the work commences before the onset of Dakshinayana. If for some reason, one or the other expert is not in a position to undertake the obligations, the Administrative Committee shall ensure that the same shall be carried out by the remaining experts. It remains the earnest desire of this Court, that the repairs of the deity are commenced expeditiously, as stated above, and are concluded at the earliest. The suggestions of the experts indicating the manner of carrying out the repairs will be supported financially by the Administrative Committee. Learned counsel for the rival parties, shall convey to the experts, the above desire expressed by this Court.

11. Learned counsel for the rival parties are ad-idem that the responsibility vested with the Overseeing Committee has been discharged, and as such, the Committee may be dissolved. We

order accordingly. It was however pointed out, that some of the responsibilities of the Overseeing Committee were delegated to the Expert Committee. The Expert Committee has also substantially completed its task. However, an inventory of the Kallara B is yet to be prepared, which shall be prepared only after express direction of this Court.

12. Finally, at the joint request of learned counsel for the rival parties, the Conservation Committee is re-constituted as under:

1. Dr.Velayudhan Nair
2. Mr.S.Ramamurthy (Archaeologist)
3. Mr.Sharat Sunder R
4. Mr.V.Ratheesan

13. In our motion bench order dated 09.05.2017, we had constituted a Selection Committee for the Sreekovil and other allied works by recording as under:

> "6. It was further submitted, that the Selection Committee, for the Sreekovil and other allied works, which has been mutually agreed, should consist of :
>
> a. Shri Kanipayyoor Shri Krishnan Namboodripad;
> b. Dr. M. Velayuthan Nair
> c. Shri S. Ramamurthy (Archaeologist)
> d. Shri Sharath Sunder R., (Suggested by Shri KK Venugopal, learned Senior Counsel).
>
> The said committee be permitted to choose the most suitable persons, at the best competitive prices and subject to ratification by the Administrative Committee, award the work. Allowed as prayed."

14. It was submitted, that the aforesaid Selection Committee has not finalised the most suitable persons for carrying out the Sreekovil, and other allied works. In order to expedite the finalisation of choosing the most suitable persons, we consider it just and appropriate to request and appoint Hon'ble Mr.Justice K.S.P.Radhakrishnan, a retired Judge of this Court, as the Chairman of the Selection Committee, contemplated in paragraph 6 of the motion bench order dated 09.05.2017 (extracted above). For the responsibility vested in him, Hon'ble Mr.Justice K.S.P.Radhakrishnan (Retd.) shall be at liberty to fix his own

> honorarium and terms and conditions, which shall be honoured by the temple."

38. In these appeals we heard Mr. Krishnan Venugopal, learned Senior Advocate for the appellant No.1 and Mr. Arvind P. Datar, learned Senior Advocate for the appellant No.2; Mr. M.K.S. Menon and Mr. J. Sai Deepak, learned Advocates for the Intervenors supporting the appellants; Mr. Jaideep Gupta, learned Senior Advocate for the State and Mr. P.B. Suresh, learned Advocate for respondents 3, 4 and 6 in appeal arising out of Special Leave Petition (Civil) No.12361 of 2011.

39. Mr. Krishnan Venugopal, learned Senior Advocate submitted:-

> "A. The Covenant and the Act are not the source of the Trust but only recognize pre-existing rights of the Ruler to manage the Temple and regulate that right to the limited extent of providing that the Ruler as Trustee shall control and supervise the administration of the Temple through an Executive Officer and an Advisory Committee appointed/selected by him.
>
> B. Factually, there is no dispute that it is the Rulers of Travancore who founded and endowed the Temple and thereafter have managed it without interruption for several centuries."

Reliance was placed on the expressions in Article VIII(b) of the Covenant and Section 18(2) of TC Act and other material including excerpts from a book titled "Travancore" by Emily Gilchrist Hatch[15] :-

[15] Published by Oxford University Press, 1939

> "C. The only requirement for validly creating a Hindu religious endowment in favour of an idol or temple is that the settlor must clearly and unambiguously express his intention in that behalf.
>
> D. The Trustee's relationship with the Temple is in the nature of a *shebaitship* which is also a "trust" in its broad and general sense as signifying a fiduciary relation under which a person having control over a property is bound to use that property for specified objects."

It was submitted that the appellant No.1 was not making any claim to the ownership of the Temple but was only seeking his right to manage the Temple:-

> *"*E. *Shebaitship* devolves upon the heirs of the founder absent any contrary usage or custom.
>
> F. In the present case, the custom and usage by which the trusteeship of the Temple devolves is the *marumakkathayam law."*

And lastly it was submitted :-

> "G. The definition of 'Ruler' in Article 366 (22) is only for purposes of Constitution and not for any other statute.
>
> H. The administration of temples by the erstwhile Maharaja of Travancore was only as a trustee and not by virtue of regal or sovereign power."

40. Mr. Arvind P. Datar, learned Senior Advocate submitted that the judgment under appeal had gone way beyond the pleadings and dealt with issues having far reaching consequences in the absence of any pleadings. He stressed upon the expression "present Ruler" appearing in Article IV of the

Covenant as against the term "Ruler" occurring at other places in the Covenant and submitted that the term "Ruler" must mean the Ruler who succeeded to the gaddi as per custom and usage. He further submitted:-

> "Article 362 only required the legislature to take note of the covenants, agreements and other documents, which were signed with the Rulers while enacting laws. Accordingly, provisions relating to exemption from taxation, preservation of method of succession etc. were made to the Income Tax Act, 1922, Income Tax Act, 1961, Wealth Tax Act, 1957 etc. Significantly, section 5(ii) of the Hindu Succession Act, 1956 also preserved the Rules of Succession for Rulers and specifically stated that the provisions of this Act would not apply to the States which were covered by the covenants or agreement with the Rulers. Other examples are provisions in the CPC and Cr.P.C. granting certain exemption to Rulers…….
>
> … … …
>
> It is significant that despite the abolition of the Privy Purses by the Constitution (26th Amendment) Act, 1971, several of these exemptions have continued till date. If the concept of Rulers had been totally abolished, then there would not have been exemption from income, property tax, wealth tax etc. to all the 555 Rulers who signed the covenants or agreements. Such a condition is wholly untenable. [See The Rulers of Indian States (Abolition of Privileges) Act, 1972, which continued several benefits to the "Rulers".]"

He then relied upon the provisions of Article 363 of the Constitution to submit:-

> "Therefore, there is a bar under Article 363 to entertain the dispute. This has not been discussed by the High Court. These covenants were signed by the Secretary to the Government of India and indicated that the covenants are in the nature of an Act of a State and the municipal court could not have jurisdiction over any disputes arising out of its terms.

> In ***Sawai Tej Singhji of Alwar v. Union of India***[16], the bar of Article 363 was held to apply even to an eviction suit of certain buildings referred to in a letter written in pursuance of the Rajasthan covenant. The suit was filed by the Maharaja. By the same analogy, the writ petition on the question of Rulership would directly be covered by the bar under Article 363."

41. Mr. M.K.S. Menon, learned Advocate appearing for some of the members of the royal family of Travancore as intervenors submitted that the Constitution, as amended by the Constitution (Twenty Sixth Amendment) Act, 1971 extinguished the rights, liabilities and obligations pertaining to the Privy Purses alone, and would not impact the mode of succession to the office of a trustee; and that the expression "Ruler of Travancore" in Section 18 of the TC Act was not to limit the trusteeship to the "Last Ruler of Travancore".

42. Mr. J. Sai Deepak, learned Advocate appearing for Intervenors including Thantri of the Temple who is stated to be the final authority on the religious practices and traditions of the Temple and "People for Dharma" who had intervened and assisted this Court in the Sabrimala case relied upon documents such as "Kerala Mahatmyam", Book of Princess Gouri Lakshmi Bayi[2], Book titled "History of Travancore from the Earliest Times"[17] and the

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16 (1979) 1 SCC 512

17 Authored by P. Shungoonny Menon, Dewan Peishcar of Travancore and published in 1878

"Travancore State Manual"[18] to stress the special relationship of the Rulers of Travancore as "Padmanabhadasas" with Sri Padmanabhaswamy. He submitted that the ruling family traces its lineage to Maharaja Aditya on whom Bhagwan Parshurama is believed to have bestowed the duty to take care of the Temple and that the role played by the royal family as descendants of Maharaja Aditya and as "Padmanabhadasas" being essential and integral to the very founding and identity of the Temple, would be fully protected by Articles 25(1) and 26(b) of the Constitution. He further submitted that "Parashurama Padhati" being practised by a handful of temples in the World including the Temple, said Padhati having a distinct identity of its own, and the people being integrally connected to the Temple would be entitled to protection under Article 29(1) of the Constitution. In his submission, Article VIII of the Covenant is a stand-alone recognition of the relationship between the Ruler of Travancore and the Temple; that said Article is neither part of the Privy Purse arrangement under Article XIV nor part of the personal rights, privileges, dignities and titles of the Ruler as referred to in Article XVII of the Covenant; and therefore any development or operation of law affecting other provisions of the Covenant would not affect Article VIII of the Covenant. It was further submitted that the

[18] Authored by V. Nagam Aiya, Dewan Peishcar of Travancore and published in 1906

expression "arising out of" in Article 363 of the Constitution being of the widest amplitude, disputes having any connection with the Covenant would be beyond the scope of judicial review by virtue of Article 363(1) of the Constitution. In support of the submission, reliance was placed on the decision of this Court in ***Renusagar Power Co. Ltd. vs. General Electric Company and Ors.***[19]

43. In response, Mr. Jaideep Gupta, learned Senior Advocate for the State submitted that two sets of issues arise for consideration:

A) The true and correct definition of the word "Ruler" in Section 18(2) of TC Act.

B) Allegations of mismanagement of the Temple.

Since the reports of the learned *Amicus Curiae* and of Mr. Vinod Rai were not dealt with by the learned counsel for the appellants in their opening submissions, Mr. Gupta deferred submissions regarding the second issue, till the appellants were heard on the said Reports. As regards the first issue, he submitted:-

[19] AIR (1985) SC 1156 : (1984) 4 SCC 679

i) The expression "Ruler" was repeatedly used in the Covenant in the context of head of the State and the expression "Ruler" in Article VIII(b) must have the same meaning.

ii) The expression "Ruler" in Section 18 of the TC Act must be given the same meaning as the one contained in Article 366(22) of the Constitution and not as referring to senior members of successive generations of the royal family of Travancore.

iii) The material on record including that concerning dedication of the State to the deity by the then Ruler did not satisfy the elements necessary to constitute an endowment, which would require the appropriation of specific property for a specific religious or charitable purpose.

For this proposition, reliance was placed on the decisions of this Court in ***Profulla Chorone Requitte v. Satya Chorone Requitte***[20] and in ***Angurbala Mullick vs. Debabrata Mullick***[21].

iv) As the family of the appellant No.1 did not claim any proprietary right even of a limited nature, there could not have been any shebaitship in

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20 (1979) 3 SCC 409
21 AIR 1951 SC 293 : (1951) SCR 1125

favour of said family at any point of time and at best it would amount to hereditary trusteeship.

v) Whatever be the nature of relationship between the Ruler of Travancore and the Temple, right from inception, the office devolved upon the Ruler in his capacity as a Ruler and not as a private individual being the senior member of the ruling family of Travancore.

vi) The relationship underwent a change after the enactment of the TC Act; it became a statutory office and ceased to be in the nature of private shebaitship or hereditary trusteeship of any kind.

vii) In any case, such relationship was with the Ruler of Travancore as Ruler and with the abolition of the concept of Ruler by the Constitution (Twenty Sixth Amendment) Act, 1971, it ceased to have any effect.

viii) The bar under Article 363 of the Constitution would not get attracted in the instant case.

With regard to the submissions advanced by the learned counsel appearing for the Intervenors, it was submitted that in the absence of a claim by a properly constituted Religious Denomination, there would be no question of adjudicating or giving a finding regarding violation of any rights under Articles 25 and 26 of the Constitution. In his submission, there would be no

occasion to enter into the question whether or not the Temple is of a Denominational character; and in any case the relationship between the Ruler of Travancore and the Temple cannot be said to be an essential or integral part of the Hindu religion in general.

44. Mr. Gupta, leaned Senior Advocate also submitted a chart giving details about the expenditure incurred by the State in connection with the Temple. Leaving out the annual contribution that the State is required to extend, the Chart shows expenditure incurred in the sum of Rs.11,70,11,000/- for the period 2012-2019 as under:-

Year	Govt. Order No.	Item	Amount
2012	2. G.O. (Rt) No.240/2012/RD Dated 12.01.2012	Fund to Digital Archiving of Antiques and artifacts-Keltron	2.5 crores
	3. G.O. (Rt) No.1859/2012/RD Dated 29.03.2012	Fund to Expert Committee Sree Padanabha Swamy Temple	50 lakhs
	4. G.O. (Rt) No.6668/2012/RD Dated 22.11.2012	Fund for Strengthening Kallara-A at Sree Padmanabha Swamy Temple – Expert Committee	54 lakhs
2013	2. G.O. (Rt) No.4426/2013/RD Dated 02.08.2013	Visit of Prof. Babu, Delhi University to Padmatheertham pond	30 thousand
	3. G.O. (Rt) No.6542/2013/RD Dated 09.12.2013	Additional Fund to Digital Archiving of Antiques and artifacts- Keltron	86.39 lakhs
2014	1. G.O. (Rt.) No.1821/2014/ RD Dated 07.05.2014	Fund to Expert Committee Sree Padmanabha Swamy Temple	1 Crore

	2. G.O. (Rt.) No.1843/2014/ RD Dated 12.05.2014	Fund for Strengthening Kallara -A at Sree Padmanabha Swamy Temple – Expert Committee	67.65 lakhs
	3. G.O. (Rt.) No.4308/2014/ RD Dated 02.09.2014	Additional Fund to Digital Archiving of Antiques and artifacts – Keltron	66.16 lakhs
	4. G.O. (Rt.) No.4980/2014/ RD Dated 16.10.2014	Fund allotted to Audit Committee	48 lakhs
2015	1. G.O. (Rt.) No.09/2015/ RD Dated 05.01.2015	Renovation of Padma Theertham pond	1 Crore
	2. G.O. (Rt.) No.3133/2015/ RD Dated 18.06.2015	Additional Fund to Digital Archiving of Antiques and artifacts – Keltron	30.36 lakhs
	4. G.O. (Rt.) No.6506/2015/ RD Dated 05.12.2015	Additional Fund to Digital Archiving of antiques and artifacts – Keltron	1.5125 crore
2016	G.O. (Rt) No.608/2016/RD Dated 27.01.2016	Fund to Expert Committee	10 lakhs
2017	2. G.O. (Rt) No.861/2017/RD Dated 02.03.2017	Fund to Expert Committee	5 lakhs
	3. G.O. (Rt) No.2057/2017/RD Dated 01.05.2017	Renovation of Mithrananthapuram pond	1 Crore
	4. G.O. (Rt) No.4555/2017/RD Dated 30.10.2017	Sewerline from Ramana Madom near north Nada of the Temple – Water Authority	28 lakhs
2019	1. G.O. (Rt) No.123/2019/RD Dated 10.01.2019	Digital Archiving of Antiques and artifacts – C- Dit (To Executive Officer)	18 lakhs
	2. G.O. (Rt) No.124/2019/RD Dated 10.01.2019	Fund to Expert Committee	5 lakhs

Thus, Rs.6,02,16,000/- were spent on Digital Archiving of Antiques and Artifacts; Rs.1,21,65,000/- were spent on strengthening Kallara 'A' at the Temple; Rs.1,20,00,000/- were allotted to the Expert Committee; Rs.48,00,000/- were allotted to the Audit Committee, while Rs.2,00,00,000/- were spent on renovation of two ponds.

45. Mr. P.B. Suresh, the learned counsel for respondents 3, 4 and 6 in appeal arising out of Special Leave Petition (Civil) No.12361 of 2011 submitted:-

i) The Covenants executed by the erstwhile Rulers have no existence and are not enforceable. Reliance was placed on the decision of this Court in ***Raghunathrao Ganpatrao***[14].

ii) Sections 18(2) and 20 of the TC Act, being against the principles and mandate emanating from Article 363A of the Constitution, are not enforceable. Reliance was placed on the decision of this Court in ***Deep Chand and Others vs. State of U.P. and others***[22]**.**

iii) Consequently, no declaratory relief could be sought in respect of statutory provisions which have ceased to be valid.

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[22] (1959) Supp 2 SCR 8

iv) Exclusive private management of a public temple would be antithesis to the very character of a public temple. Reliance was placed on the decision of this Court in ***Bala Shankar Mahashankar Bhattjee and others vs. Charity Commissioner, Gujarat State***[23].

46. Thereafter, the learned counsel for the parties advanced submissions with regard to the Reports of the learned *Amicus Curiae* and Mr. Vinod Rai. This exercise involved entering into various factual issues for the first time in this Court. Since no adequate opportunity was afforded to various stakeholders involved in the matter, we refrain from considering the issues arising from said Reports.

47. In the end, a Note was given by the learned counsel for the appellants about the composition of Committees to take care of the affairs of the Temple. The Note was essentially in response to the affidavit of the Chief Secretary of the State which was filed on 06.11.2014. The Note suggested constitution of an Administrative Committee and an Advisory Committee as under:-

> "1. The Petitioner, hereinafter referred to as the "**Trustee"**, is placing below for the consideration of this Hon'ble Court his proposal for the control and supervision of the affairs of Sree Padmanabhaswamy Temple (the "**Temple"**). The Petitioner will

[23] (1995) Supp 1 SCC 485

file an appropriate undertaking in terms of the proposal with such modifications as may be directed by this Hon'ble Court.

2. The Trustee shall delegate his powers of administration under Section 18(2) of the Travancore-Cochin Hindu Religious Institutions Act, 1950 (the "**Act"**) to a Committee (the **"Administrative Committee"**) which shall administer the Temple through an Executive Officer to be appointed by the Committee.

3. The administrative Committee shall consist of five members:

a) a retired Indian Administrative Service Officer of the rank of Secretary to Government of Kerala (**"the State Government"**) to be nominated by the Trustee in consultation with Government of Kerala who shall be the Chairperson of the Committee;

(b) one member nominated by the trustee;

(c) one member nominated by the Government of Kerala;

(d) one member nominated by the Ministry of Culture, Government of India; and

(e) the Chief Thantri of the temple.

4. All members of the Administrative Committee shall be Hindus, who shall satisfy the requirements under the proviso to Section 2(aa) of the Act, as amended, for being appointed as members of the Travancore Devaswom Board.

… … …

8. On all policy matters relating to temple administration including the matters referred to in paragraph 11 below, the Trustee shall be guided by the advice of the Sree Padmanabhaswamy Temple Committee constituted under Section 20 of the Act (the **"Advisory Committee"**).

9. The Advisory Committee shall consist of:

(a) A retired High Court Judge who shall be nominated by the Chief Justice of the Kerala High Court and who shall be the Chairperson of the Committee.

(b) One eminent person to be nominated by the Trustee; and

(c) A reputed chartered Accountant to be nominated by the Chairperson in consultation with the Trustee.

The provisions in paragraphs 4 and 5 above shall apply equally to the Advisory Committee.

10. The Advisory Committee shall ensure that regular annual audit of the finances of the Temple is completed by a reputed accounting firm, which shall be changed every three years.

11. The Administrative Committee shall not take any decision on the following matters of policy except after obtaining the approval of the Trustee:

(a) Any expense item exceeding Rs.15 lakhs per month;

(b) Any one-time expense of Rs.1 Crore;

(c) Any major renovation/expansion of the Temple;

(d) Any changes in the Standard Operating Procedures; and

(e) Any fundamental changes in the character of the Temple that would affect the religious sentiments of its devotees."

48. On the other hand, the State also submitted a Note stating:-

"It is proposing the following administrative / legal alternative measures for the administration of Sree Padmanabha Swamy Temple by forming a Managing Committee on the model of the Guruvayur Devaswom Managing Committee, constituted for administering the activities of Guruvayur Temple. It is also submitted that Govt. will enable that Committee to administer the Sree Padmanabha Swamy Temple by amending Chapter III of the TCHRI Act, 1950.

The following is extracted from the Preamble of the Guruvayur Devaswom Act, 1978:

> "Nos.211 and 212 of 1930, for the administration of the said Temple, as modified by the District Court, South Malabar, in O.S. No.1 of 1938, the administration, control and management of the temple and its properties and endowments had been vested in the hereditary trustees, namely, the Zamorin Raja of Calicut and the Karanavan for the time being of the Mallisseri Illom at Guruvayur;

And whereas the administration and management of the said Temple and its properties and endowments had deteriorated and a situation had arisen rendering it expedient to reorganize, in the interest of the general public, the scheme of Management of the affairs of the Devaswom, the Guruvayur Devaswom Act, 1971, was enacted to provide better management of the Devaswom in suppression of the said scheme."

In the present case, it is submitted that owing to a similar ground of deteriorating condition of the Temple Administration, and taking into consideration the rights of the devotees and erstwhile "Royal Family" through the Padmanabhadasa, the State proposes the following administrative / legal alternative for the administration of Sree Padmanabha Swamy Temple.

… … …

3. Constitution of a Committee:

1. The Committee constituted shall consist of 8 members and shall be composed as follows:

a) The Padhmanabhadasa

b) The Senior Thantri – ex-officio

c) Not more than 5 members, of whom one shall be a member of Scheduled Caste/ Scheduled Tribe and one shall be a woman nominated by the Hindus among the Council of Ministers from among persons having interest in the Temple.

d) A representative of the employee of the Devaswom nominated by the Hindus among the Council of Ministers.

2. A person shall be disqualified for being nominated under clause (c) of sub-section (1), if:-

> (i) He believes the practice of untouchability or does not profess the Hindu Religion or believe in temple worship; or
>
> (ii) he is an employee under the Govt. or Devaswom; or
>
> (iii) he is below 30 years of age; or
>
> (iv) he is subject to any of the disqualifications mentioned in clauses (a), (b) and (c) of sub-section (1) of Section 5.
>
> 3. The members of the Committee shall at it first meeting, elect one of its members as Chairman."

49. Before we consider the rival submissions, the unequivocal stand taken by the appellants in the grounds of appeal that "the Temple is a public temple and no claim can probably be made by the Petitioner or anyone to owning the Temple or its treasures" and that what was being sought was only the right as a trustee of the Temple to manage and administer it, must be noted at the outset. The said stand was expressly referred to in the Order dated 21.07.2011 by this Court, and subsequent Orders, and the consideration of the instant case has been premised on the said stand.

50. In the backdrop of the facts and circumstances on record, the issues concerning the status and entitlement of the appellant No.1 including the relationship vis-à-vis the Temple are concerned, the controversy can be considered under following five segments:-

A] Situation obtaining before and upto the date when the Covenant was entered into in May 1949.

B] Effect of the Covenant that was entered into in May 1949.

C] Effect of the Constitution of India as it stood before the Constitution (Twenty Sixth Amendment) Act, 1971 and of the provisions of the TC Act.

D] Effect of the Constitution (Twenty Sixth Amendment) Act, 1971.

E] Effect of the death of the person who had signed the Covenant as the Ruler of Travancore.

A] Situation obtaining before and upto the date when the Covenant was entered into in May 1949

51. Special Leave Petition (Civil) No.11295 of 2011 from which the present appeal arises, asserted:-

"1375 to 2011 A.D. (= 550 To 1186 M.E/ Malayalam Era)	Recorded evidence shows that the Sri Padmanabhaswamy Temple, Thiruvananthapuram temple was administered by the Royal Family of Venad/Travancore.

Sri Padmanabhaswamy temple (hereinafter referred to as the 'temple) is a famous temple of Lord Vishnu, located in Thiruvananthapuram, Kerala. The temple is one of the 108th holiest abodes ('Divya desoms') of Lord Vishnu. Divya Desams are the holiest abodes of the Lord Mahavishnu that are mentioned in the works of the Tamil Azhvars (saints). The main deity, Sri Padmanabhaswamy, is a form of Vishnu in Anananthasayanam

> posture (in eternal sleep of *yognidra)* lying on Sri Anantha, the hooded snake. The city of Thiruvananthapuram is named after the Lord. The word Thiruvananthapuram literally means "The land of Sree Anantha Padmanabhaswamy". As per the available literature the temple was established several millenniums ago.
>
> The belief is that when Sri Vilwamangalam Swamiyar (Divakara Muni) had a vision of Sree Padmanabha in the dense woods of Ananthankad, the then king of Vanchinad (Travancore) took initiative to build the temple for the Lord. Thus, it is said, began the relation between the Travancore royal family and the Temple."

52. With regard to the historical account about the establishment of the Temple, the written submissions filed on behalf of the appellant No.1 state:-

> "18. Although the origins of the temple are shrouded in the mists of antiquity, it is believed that the then Maharaja of Travancore established the Temple in or around 1375. According to the legends surrounding the Temples set out in Emily Gilchrist Hatch's book titled **"Travancore"** (Oxford University Press, 1939), there are two separate versions of how the Temple came to be built:
>
> > (a) ….[A] *five headed cobra put the child in a hole in the tree and spread his hood to provide shelter from the sun. this child was the incarnation of God Vishnu. The Pulaya couple daily offered milk and kunjee in a half coconut shell. The Ruler of Travancore heard of this and immediately had a temple built at the very place.*
> >
> > *(b)"…The second story also tells a child… After several days of wandering in the open country, the*

> *hungary, distressed Swamiyar heard a child's cry…. As he started towards the place, he heard again the tingle of waist-bells and immediately a huge tree fell to the ground. There before him lay God Vishnu on his thousand-headed serprent…. It is said that tree which crashed to earth was carved into the image of Vishnu over which the then Raja of Travancore erected a temple."*
>
> In both legends, therefore, it is the Maharaja of Travancore who is said to have founded the Temple.
>
> 19. After the Temple was engulfed in a huge fire in 1686, the then Maharaja of Travancore rebuilt the Temple."

53. The account given by the High Court in para 4 of the judgment under appeal states that for over 200 years prior to the re-establishment of the princely state by Marthand Varma, the Temple was under the control of 'Ettarayogam' (group of eight and a half) including 'Ettuveettil Pillamars' and then refers to the battle between Marthand Varma and his loyalists on one hand and the Ettuveettil Pillamars on the other, whereafter Marthand Varma took full control of the State and the Temple. The High Court then states, "… it is he (Marthand Varma) who reconstructed the Temple which was in bad shape after a major fire took place years back and installed a new idol."

54. Though there may be different accounts and beliefs with regard to the origin and how the Temple was set up, every version accepts that the King of

Travancore had a role in the administration of the Temple to begin with, and that he was the one who re-constructed the Temple after a major fire that occurred in the year 1686, and installed a new idol and took full control of the Temple. The King of Travancore was thus responsible for setting up the Temple, in the form that it stands today, and it was the King who installed the new idol, and since then the management of the Temple, till the Covenant was signed, had always been with the Kings of Travancore.

55. It is also asserted in the grounds in support of the appeal, that the royal family of Travancore had been making endowments in favour of the Temple and that Lord Padmanabha is considered as the family deity by the erstwhile royal family. Some of the practices adverted to in the Special Leave Petition were as under:-

> "… …Historically, the petitioner and his predecessors have had a very close association with the Padmanabhaswamy temple, and holds a pre-eminent position in the rituals and practices of the temple. Some of these are listed below:
>
> i. From the time a female member of the erstwhile Royal Family conceives, there are special poojas in the temple at prescribed periods and recitation of personal prayers;
>
> ii. The Padmanabhadasa and the members of the royal family escort the idols of Sree Padmanabha, Sree Narasimha and Sree Krishna during the 'Arattu' procession

(Holy Bath of the Lord) to the beach and perform various rituals;

iii. Every male child born to the erstwhile Royal Family, after he completes one year, is made a 'Dasa' of Lord Padmanabha before the sanctum sanctorium;

iv. Every female child, born in the erstwhile Royal Family, is made a 'Sevini' of Lord Padmanabha through prescribed rituals;

v. Special ceremonies are conducted at the time when male members undergo 'Upanayanam' and at the time of marriage of female members of the erstwhile Royal Family;

vi. The Padmanabhadasa has many obligations and whenever he breaches them, he imposes a penalty on himself by way of compulsory offerings to the Lord;

vii. The Padmanabhadasa has to take the permission of the deity when he leaves the town as per custom and by offering 'pattu' and 'kanikka' (silk and offerings), he also has to make amends for his absence depending on the length of absence;

viii. The Padmanabhadasa has an 'ekantha darshan' with the Lord, on all days in the morning hours, and at this time, except the Nambi, all others are excluded;

ix. Whenever a member of the royal family passes away, the 'veerali pattu' with which the deity is covered is sent form the temple to cover the body before cremation;

x. In all temple rituals, the Padmanabhadasa is an obligatory participant;

xi. When the deity is taken out in procession, the Padmanabhadasa leads the procession with drawn out sword (udaval) alongwith the heir apparent. The Padmanabhadasa accompanies the deity for the Palliveta on both the festivals and does the *vetta* on the behalf of the deity."

56. The assertions referred to above were not denied or traversed. As a matter of fact, the stand in the affidavits filed on behalf of the State in the Courts below, accepts the position of the erstwhile royal family vis-à-vis the Temple and Sri Padmanabhaswamy. The affidavits were sworn by responsible officers holding the posts of Joint Secretary and Additional Secretary in the State Government. It was stated in both the affidavits;-

> "… …There are also many temples owned by private Trustees and local organization of Hindus too like the Attukal Bhagavathy Temple, Pazhavangadi Ganpathy Temple etc. Sree Padmanabha Swamy Temple is also such a family temple trust owned and managed by the Travancore Palace … …
>
> … …The traditional and customary belief that has been for long recognized and accepted is that Sree Padmanabha Swamy Temple belongs to "Sree Padmanabha Dasas", the Royal family head of Travancore Palace and they command high regard respect and esteem form the public. … …"

57. Leaving aside the issue of ownership as such status is not claimed by the appellant No.1 or any of the family members who have intervened, the fact remains that it is well accepted that the management of the Temple had all along been in the hands of the ruling family or the Travancore Palace. As stated by the State, that has been the traditional and customary belief. Such management has spanned, not for few years or decades, but dates back to centuries.

58. The learned *Amicus Curiae* in his report dated 01.11.2012 had stated about the Temple and some of the erstwhile Rulers of Travancore as under:-

> "29. In this context, it may be necessary to mention that the Sree Padmanabha Swamy Temple is an integral part of the traditions of the Royal family of the erstwhile State of Travancore and also the people of Kerala (including the residents of the ancient city of Thiruvananthapuram). It is interesting to note that Ashwathi Thirunal Gouri Lakshmi Bayi (one of the members of the Royal family), in her book Sree Padmanabha Swamy Temple published by the Bharatiya Vidya Bhavan, interestingly refers to the Prakrit version and the final Sanskrit version of Sree Anandapuram from Syanandoorapura. The Sree Padmanabha Swamy Temple is connected to twenty four holy teerthams and is also linked with certain other temples, many of which are in the State of Tamil Nadu. It may be noted that even today, Mathilakom records or the palm leaves scrolls which recorded the ancient history of the Temple and that of the erstwhile State of Travancore are available in the Temple premises and in the Kerala State Archives….
>
> 30. It must also be noted that the idol of Lord Padmanabha is made using *katu sharkara yogam* (a complex mixture of 8 natural ingredients) in which 12008 Salagramas were filled in. This idol made using *katu sharkara yogam* was consecrated in the year 1739 under the aegis of the erstwhile ruler of Travancore, Veera Marthanda Verma (1706-1758). Salagrama is not a mere stone but a stone of longstanding tradition and spiritual potency in which it is believed that Hari or Lord Vishnu resides (hence, *yatha salagrame hari*). Thus, Eashwara or god manifests Himself in saguna forms in various ways – in the Salagrama as Vishnu, in the lingam as Shiva and in the chakra as Devi (Mother Goddess). Usually, when 12 salagrama shilas are worshipped, it equals the potency of a mahakshetram or a great temple. Therefore, the sanctity of Sree Padmanabha Swamy Temple is a thousand fold.
>
> … … …
>
> 34. At this juncture, it would be appropriate to mention that the Travancore Royal family is also called the Venadu Raja Vamsha which is the off-shoot of Chera roya lineage and the Ayi royal dynasty, and has always regarded Lord Padmanabha Swamy as their tutelory Deity and this is confirmed by many historical records where Lord Padmanabha is addressed as

> 'yadavendrakuladaivatam' or the family Deity of yadavakshatriyas (the present Travancore royalty); thereby confirming that Sree Padmanabha Swamy is the 'kuladaivta' of the entire family. It may be noted that devotees other than royalty have worshipped Lord Padmanabha Swamy as their 'ishta daivta' or God of one's personal choice.
>
> 35. It was in 1731 A.D. that the first King of the erstwhile Travancore Royal family, Sree Veera Marthanda Varma, was anointed. He was succeeded by Rama Varma (1758-1798). Moreover, the Royal family consisted of deeply devoted members who were dedicated to the Temple and who believed that their lives centred around Sree Padmanabha Swamy. In 1750 A.D., the entire State of Travancore was gifted to this Deity by a Deed and the Rulers became servants of the Lord, calling themselves as Padmanabhadasa. It may also be noted that many of the Maharajas were great composers of shlokas as well as music. In fact, many of the Rulers were protectors of the Vedas and the vedic tradition. Further, the Temple was governed by a council of trustees called Ettara Yogam headed by the King.
>
> 36. One of the greatest Kings of the Royal family was Sri Swathi Thirunal Maharaja Rama Varma (1813-1846) who was a great patron of the arts, literature, music and modern science. He was an extraordinary King who presented an incorruptible system of governance, framed the first code of regulations of Travancore, advanced English education, contributed to a collection of rare manuscripts and undertook a large number of social welfare measures. In fact, Sri Swathi Thirunal is regarded as one of the four great vidwans of Carnatic music – they being Muthuswamy Dikshitar, Thyagaraja, Shyamasastry and Swati Thirunal. The Kings including Sri Swathi Thirunal donated their personal wealth to the Temple and, as recorded by Dr. Ventkata Subramanya Iyer in his brilliant book 'Swathi Thirunal and his music', during his eventful life, once when one of his courtesans presented a varnam in his honour, the King directed that it should not be used because only Lord Padmanabha Swamy must be lauded with music."

59. The practices referred to in the earlier paragraph show that right from the conception of a child upto the death of any member of the erstwhile royal

family, special prayers are offered and certain rituals are followed. Every male child born in the erstwhile royal family, is made "Dasa" of Sri Padmanabhaswamy while every female child is made "Sevini" through prescribed rituals. Special ceremonies are conducted at the time of 'Upanayanam' of a male member and marriage of a female member of the erstwhile royal family. Even assuming that these practices are being or could possibly be followed by other families as well, in addition to these features, the facts that the Ruler is an obligatory participant in various temple rituals; that he has an 'Ekantha Darshan' with Sri Padmanabhaswamy on all days in the morning hours where, except the Nambi, nobody else can remain present; that the Ruler has to take special permission whenever he leaves the town; and that whenever the deity is taken out in procession, the Ruler leads the procession with the sword drawn out, along with the heir apparent, establish the special relationship that the erstwhile royal family in general and the Ruler in particular, have always had with Sri Padmanabhaswamy. The ceremony of Dedication undertaken by the then ruler in 1750 A.D. bears testimony to such relationship as well as the deep devotion and sense of complete surrender before Sri Padmanabhaswamy. "The Thrippati Danam", the translation of which is set out in paragraph 5, shows that "all the lands and functions together

with all rights and dignities, positions of honour and all other possessions" that the royal family was enjoying hitherto before, were dedicated to Sri Padmanabhaswamy. Even the royal sword was placed with utmost reverence on the *Ottakkal Mandapam* leading to the Sanctum, which the King got back from the high priest. Every further acquisition by the King was always surrendered to Sri Padmanabhaswamy. The King and his successors thus ruled and conducted themselves as "Padmanabhadasas" and agents of Sri Padmanabhaswamy.

60. Tested on any parameter, such as historical accounts, popular and customary beliefs, certain practices connected with the rituals and affairs of the Temple that mandatorily require the presence and participation of the Ruler, deep involvement of the members of ruling family and their connection with the Temple and Sri Padmanabhaswamy at various stages of their lives, "The Thrippati Danam" and its significance, and long recognised and accepted fact that the management of the Temple had always been with the Ruler, lead us to conclude that for centuries, the Temple had been under the exclusive management of successive Rulers from the ruling family of Travancore and that the Rulers of Travancore, till the signing of the Covenant, were in the capacity as Managers or Shebaits of the Temple.

The expression Shebait is derived from "sewa" which means service and Shebait, in literal sense, means one who renders "sewa" to the idol or a deity. Every Ruler of Travancore would call himself "Padmanabhadasa" i.e. one who is engaged in the service of Sri Padmanabhaswamy.

61. The Travancore Interim Constitution Act, 1123, which came into force on 24.03.1948 i.e. before the Covenant was entered into, is also a factor that points in the direction of the aforesaid conclusion. In terms of this Act, all matters connected with Sri Pandaravaka (which expression admittedly referred to the Temple and the extensive lands belonging to Sri Padmanabhaswamy) as well as Devaswoms and Hindu Religious Endowments were stated to be under the exclusive control and supervision of the Ruler of Travancore. This Act by itself does not determine the status of the Ruler of Travancore with respect to Sri Pandaravaka and the Dewaswoms and Hindu Religious Endowments in Travancore, but is indicative of the requisite intent on part of the Ruler of Travancore to retain to himself the matters concerning administration and management of Sri Pandaravaka and Dewaswoms and Hindu Religious Endowments.

62. Having considered the factual scenario, we must now consider the legal character and incidents of Shebaitship. On the issue of the legal position of a Shebait and succession to the office of the Shebait, some of the leading decisions of the Privy Council and of this Court are as follows:-

a) In ***Gossamee Sree Greedharreejee vs. Rumanlolljee Gossamee***[24] the Privy Council stated:-

> "According to Hindu law, when the worship of a thakoor has been founded, the shebaitship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to show a different mode of devolution. This principle is illustrated by the decision in the case of *Peet Koonwur v. Chutter Dharee Singh*[25], and in the present case some of the learned Judges of the High Court have affirmed it, while none has expressed dissent from it. One learned Judge thought that the principle does not apply to this case, because Dowjee was not the founder of the Calcutta worship. But their Lordships adopt the view of the other Judges, and holding that the mortal Dowjee was the founder they must also hold that the Plaintiff is by general law the shebait of that worship."
>
> (Emphasis added)

b) The afore-stated principles were expounded further by the Privy Council in ***Vidya Varuthi Thirtha Swamigal vs. Balusami Ayyar and Ors.***[26]

> "It is also to be remembered that a "trust," in the sense in which the expression is used in English law, is unknown in the Hindu system, pure and simple. (J.G. Ghose, "Hindu Law," page 276.) Hindu piety found expression in gifts to idols and images

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24 16 M.I.A.137 : (1889) L.R. 16 I.A. 137
25 13 Suth. W.R. 396
26 AIR 1922 PC 123 : 48 I.A. 302

> consecrated and installed in temples, to religious institutions of every kind, and for all purposes considered meritorious in the Hindu social and religious system: to Brahmans, Goswamis, sanyasis, etc. When the gift was to a holy person, it carried with it in terms or by usage and custom certain obligations. Under the Hindu law the image of a deity of the Hindu pantheon is, as has been aptly called, a "juristic entity," vested with the capacity of receiving gifts and holding property. Religious institutions, known under different names, are regarded as possessing the same "juristic" capacity, and gifts are made to them eo nomine. In many cases in Southern India, especially where the diffusion of Aryan Brahmanism was essential for bringing the Dravidian peoples under the religious rule of the Hindu system, colleges and monasteries under the names of mutt were founded under spiritual teachers of recognized sanctity. These men had and have ample discretion in the application of the funds of the institution, but always subject to certain obligations and duties, equally governed by custom and usage. When the gift is directly to an idol or a temple, the seisin to complete the gift is necessarily effected by human agency. Called by whatever name, he is only the manager and custodian of the idol or the institution. In almost every case he is given the right to a part of the usufruct, the mode of enjoyment and the amount of the usufruct depending again on usage and custom. In no case was the property conveyed to or vested in him, nor is he a "trustee" in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee, in the general sense, for maladministration."
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> (Emphasis added)

c) In ***Bhaba Tarini Debi vs. Asha Lata Debi***[27]**,** while dealing with the rights of a Shebait, the Privy Council stated:-

> "The shebait has certainly a right of property in his office and it may be correct to say that he has some sort of beneficial interest in the debuttar property, but the idol is the owner of the property and the limit set to the shebait's power of disposition is set, not to preserve the interest of the next shebait, but to maintain and preserve by proper management the endowment or religious institution."

[27] AIR 1943 PC 89 : (1943) ILR 2 P.C. 137

The following passage from the decision of the High Court (per B.K. Mukherjea, J.[28]) which was under appeal, was quoted by the Privy Council with approval:-

> "To me it seems that both the elements of office and property, of duties and personal interest, are mixed up and blended together in the conception of shebaitship. One of the elements cannot be detached from the other. The entire rights remain with the grantor when a deity is founded and it is open to him to dispose of these rights in any way he likes. If there is no disposition, shebaitship remains like any other heritable property in the line of the founder and each succeeding shebait succeeds to the rights by virtue of his being an heir to his immediate predecessor and not to the original grantor. If it is disposed of completely and absolutely in favour of another person, there remains nothing in the grantor except the possibility of a reverter when there is a failure of extinction of the line of shebaits indicated by him. If, on the other hand, the founder has parted with his rights only in a partial manner for the lifetime of the grantee the residue still remains in him and his heirs, and on the death of the grantee, the heir of the founder living at the time is entitled to the shebaitship. If the grantee in such cases happens to be the sole heir of the founder upon whom the residuary right devolves at the same time and he becomes the shebait under law as well, then, whether or not we invoke the technical doctrine of merger or coalescence of the particular estate with the residue, his position in my opinion is that of an absolute shebait whose rights devolve upon his heirs and not upon the heirs of the founder at his death."
>
> (Emphasis added)

[28] Later, Chief Justice of India.

d) In the decision rendered in May 1951 in ***Angurbala Mullick***[21], a Bench of four Judges of this Court had an occasion to consider the legal position of a Shebait. In the leading Judgment authored by B.K. Mukherjea, J.[29], it was observed:-

> "The exact legal position of a shebait may not be capable of precise definition but its implications are fairly well established. It is settled by the pronouncement of the Judicial Committee in *Vidya Varuti v. Balusami*[26] that the relation of a shebait in regard to debutter property is not that of a trustee to trust property under the English law. In English law the legal estate in the trust property vests in the trustee who holds it for the benefit of cestui que trust. In a Hindu religious endowment on the other hand the entire ownership of the dedicated property is transferred to the deity or the institution itself as a juristic person and the shebait or mahant is a mere manager.
>
> But though a shebait is a manager and not a trustee in the technical sense, it would not be correct to describe the shebaitship as a mere office. The shebait has not only duties to discharge in connection with the endowment, but he has a beneficial interest in the debutter property. As the Judicial Committee observed in the above case, in almost all such endowments the shebait has a share in the usufruct of the debutter property which depends upon the terms of the grant or upon custom or usage. Even where no emoluments are attached to the office of the shebait, he enjoys some sort of right or interest in the endowed property which partially at least has the character of a proprietary right. Thus, in the conception of shebaiti both the elements of office and property, of duties and personal interest, are mixed up and blended together; and one of the elements cannot be detached from the other. It is the presence of this personal or beneficial interest in the endowed property which invests shebaitship with the character of proprietary rights and attaches to it the legal incidents of property. This was elaborately discussed by a Full Bench of the Calcutta High Court in *Manohar Mukherji v. Bhupendra Nath Mukherji*[30] and this decision of the Full Bench

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29 As the learned Chief Justice then was

30 I.L.R.(1933) 60 Cal. 452

> was approved of by the Judicial Committee in *Ganesh Chunder Dhur v. Lal Behary*[31] and again in *Bhabatarini v. Ashalata*[27]. The effect of the first two decisions, as the Privy Council pointed out in the last case, was to emphasize the proprietary element in the shebaiti right, and to show that though in some respects anomalous, it was an anomaly to be accepted as having been admitted into Hindu law from an early date. "According to Hindu law," observed Lord Hobhouse in *Gossamee Sree Greedharreejee v. Rumanlolljee Gossamee*[24], when the worship of a Thakoor has been founded, the shebaitship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to show a different mode of devolution.
>
> Unless, therefore, the founder has disposed of the shebaitship in any particular manner - and this right of disposition is inherent in the founder - or except when usage or custom of a different nature is proved to exist, shebaitship like any other species of heritable property follows the line of inheritance from the founder."
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> (Emphasis added)

63. Soon thereafter, the author of the leading Judgment in ***Angurbala Mullick***[21], delivered Tagore Law Lectures in August 1951 which were then published in the form of a comprehensive book under the caption "*The Hindu Law of Religious Endowments and Charitable Trusts"*. After dealing with endowments created by dedication of water tanks and similar works for general consumption, in the Fourth Edition of the Book[32], it is stated:-

> **"1.54 Administrators or managers of endowments are trustees in the general sense:-**

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[31] (1935-36) 63 I.A. 448
[32] Edited by Hon. P.B. Gajendragadkar, former Chief Justice of India

> With regard to all other types of endowment it is necessary for the purpose of carrying out the intentions of the donor that somebody should be entrusted with the management or administration thereof. As was observed by Mukherjee. J. in *Manohar vs. Bhupendra*[30], in ancient times, except in cases of property dedicated to a brotherhood of ascetics, all endowments were administered ordinarily by the founder himself and after his death by his heirs. This was the case not only with regard to temples but also in respect of non-religious charitable institutions like choultries, Sadabratas etc. It was only in case of public temples that the practice of appointing shebaits was generally resorted to. But whoever may be the person in whom the duty of administration is vested, whether it is the shebait or *archaka* of a temple or the Mohant of a religious institution and whether or not such person is the heir of the original founder, he must be deemed to be in the position of a trustee with regard to the endowed property. As I have said already he may not be a trustee in the sense in which the expression is used in English law. To quote the language of the Judicial Committee in *Vidyavarathi vs. Baluswami*[26] as in no case is the property conveyed to or vested in him he is not a trustee under the English law'; but it was pointed out by the Privy Council that in view of the obligations resting on him he is answerable as a trustee in the general sense. I have already pointed out that the word "Trust" in English law involves a highly technical idea which owes its origin to purely historical circumstances and of which no parallel exists in any other system of law."
>
> (Emphasis added)

With regard to the nature of rights of a Shebait, the author stated:

> "**5.1A. Shebait the human ministrant of the deity. –** In my last lecture[33], I have dealt with the general features of a religious endowment which is known as Debutter, and which arises on dedication or gift of property to an idol. It would now be necessary to enter into details and discuss how a Debutter is managed and administered. As has been said already, "it is in an ideal sense that the dedicated property vests in an idol," and in the nature of things the possession and management of it must be entrusted to some person as Shebait or manager.

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33 Chapter 4 – Religious Trusts in favour of Idols (Debutter)

"It would seem to follow," the Judicial Committee observed in *Prosonna Kumari Debya vs. Golab Chand Baboo,*[34] "that the person so entrusted must, of necessity, be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property, at least to as great as the manager of an infant heir. If this were not so, the estate of the idol might be destroyed or wasted, and its worship discontinued for want of necessary funds to preserve and maintain them." This human ministrant of the deity, who is its manager and legal representative, is known by the name of Shebait in Bengal and Northern India. He is called the Dharmakarta in the Tamil and Telugu districts, Panchayetdar in places like Tanjore and Urallen in Malabar. He is the person entitled to speak on behalf of the deity on earth and is endowed with authority to deal with all its temporal affairs. As regards the temple property, the manager is in the position of a trustee, but as regards the service of the temple and the duties that appertain to it he is rather in the position of the holder of an office of dignity[35]. For convenience I will call the manager by the general name of Shebait, though I am aware that a distinction has been made in some cases between a Shebait and a Dharmakarta[36].

… … …

5.5. Shebaitship is not a mere office, it is property as well.- But though a Shebait is a manager and not a trustee in the technical sense, it would not be correct to describe shebaitship as a mere office. The Shebait has not only duties to discharge in connection with the endowment, he has also a personal interest in it. As the Judicial Committee pointed out in the above case, in almost all Debutter endowments, the Shebait has a share in the usufruct of the Debutter property, which depends either on the terms of the grant or upon custom or usage. Even when no emoluments are attached to the office of a Shebait, he enjoys some sort of right or interest in the endowed property which has partially at least the characteristics of a proprietary right. You shall see later on[37] that although the Shebait's power to alienate the Debutter property is very much limited and can be exercised only when there is a justifying legal necessity or benefit to the

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34 (1875) L.R. 2 I.A. 145

35 *Ramanathan Chetti vs. Muruguppa* - (1906) L.R. 33 I.A. 139

36 See *Srinivasa v. Evalappa*, L.R. 49 I.A. 237 : AIR 1922 P.C. 325, 33 approving *Vidyapurma vs. Vidyanidhi* (1904) I.L.R. 27 Mad. 435

37 Chapter 6 (Administration of Debutter: Rights, Duties and Powers of a Shebait)

deity, yet he can create derivative tenures in respect of the endowed property, which even if not supported by legal necessity cannot be impeached so long as he is alive and remains in office. The Shebait therefore has to some extent the rights of a limited owner. It has now been decided by a Full Bench of the Calcutta High Court[30] after an elaborate review of all authorities that shebaitship is property, with regard to the disposition of which the rule in *Tagore vs. Tagore*[38] is applicable, and this decision has been approved of by the Privy Council in *Ganesh Chandra vs. Lal Behari*[31] and again in *Bhabatarini vs. Ashalata*[27]. In *Janki Raman vs. Koshalyanandan*[39], the founder of an endowment had provided that the office of shebaitship should be held by three brothers and that it should devolve on their heirs. One of the brothers having relinquished his right in favour of the other two brothers, it was held that the devolution of the office was governed by the general law of succession relating to property, and that a relinquishment by the holder of an office was not binding upon his heirs and could not enure beyond his lifetime.

5.6A. Shebaitship remains in the founder and his heirs unless disposed of. - When a deity is installed, the shebaitship remains in he founder and his heirs. "According to Hindu law," thus observed Lord Hobhouse in *Gossamee Sree Greedhareejee vs. Ruman Lalljee*[24] - and this observation has been reiterated in numerous cases since then – "when the worship of a Thakoor has been founded, the shebaitship is held to be vested in the heirs of the founder in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to stow a different mode of devolution." Unless therefore the founder has disposed of the shebaitship in any particular way and except when an usage or custom of a different nature is proved to exist, shebaitship like any other species of heritable property follows the line of inheritance from the founder.

… … …

5.31. Extinction of the life of Shebaits. – When the line of Shebaits laid down by the founder is extinct, or when the Shebait to whom a power of nomination is given does not exercise the

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38 9 B.L.R. 377
39 A.I.R. 1961 Pat. 293

> power, the managership reverts to the founder who endowed the property or his heirs[40].
>
> In case the line of Shebaits is extinct, there is always an ultimate reversion to the founder or his heirs and strictly speaking, no escheat arises so far as the devolution of Shebaitship is concerned. But cases may theoretically be concerned where the founder also has left no heirs; and in such cases the founder's properties may escheat to the State together with the endowed property. In very rare circumstances like these, the right of the State would possibly be the same as those of the founder himself, and it would be for the State to appoint a Shebait for the Debutter property. It cannot be said that the State receiving a dedicated property by escheat can put an end to the trust and treat it as secular property.
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> Some observations occur in the judgment of Muthuswami Ayyar and Shephard, JJ. In *Mallan v. Purusothoma*[41], which would seem to suggest that the Government getting the property by right of escheat can put an end to an arrangement made by the original owners under which a certain property was kept undivided for being used for the worship of a deity. There is, however, no finding in this case that the property was actually dedicated to the deity, and from the observations of the High Court it appears that there was only a personal arrangement between the co-sharers under which it was excluded from partition."
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> (Underlined by us)

64. In the decision in ***Angurbala Mullick***[21] as well as in the Book as stated above, reference was made to the Full Bench decision of the Calcutta High Court in ***Manohar Mukherjee vs. Bhupendra Nath Mukherjee and Ors.***[30], where one of the issues for consideration was: whether founder of a Hindu debutter was competent to lay down rules to govern the succession to the office

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40 Sabitri Thakurani vs. F.A. Savi, I.L.R. 12 Pat. 359; Jagannath v. Ranjit Singh, I.L.R. 25 Cal. 354

41 I.L.R. 12 Mad. 287, 291.

of Shebait. Asutosh Mookerjee, J. speaking on behalf of the Bench of five Judges had observed:-

> **"15.** The deity is the recipient of the gift only in an ideal sense; the dedicated property belongs to the deity in a similar sense; in reality the property dedicated is in the nature of an ownerless thing. In ancient times, except in cases of property dedicated to a brotherhood of sanyasis, all endowments ordinarily were administered by the founder himself and after him his heirs. The idea of appointing a shebait is of more modern growth. When a Hindu creates an endowment, its management is primarily in him and his heirs, and unless he appoints a shebait, he himself fills that office and in him rests that limited ownership,- notwithstanding that, on the one hand, he is the donor and, on the other, the recipient on behalf of the deity, the juridical person- which has to be exercised until the property offered to the deity has been suitably disposed of. … … … This idea of limited ownership is the essence of the position of the manager or custodian of a dedicated property, by whatever name he may be called. That this idea is the only basis on which decisions of the highest authority as regards the rights and powers of shebaits may be justified will be seen hereafter when some of these decisions will be referred to.
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> … … …
>
> 26. Shebaitship in its true legal conception involves two ideas: The ministrant of the deity and its manager; it is not a bare office but an office together with certain rights attached to it. A shebait's position towards the debutter property is not similar to that in England of a trustee towards the trust property; it is only that certain duties have to be performed by him which are analogous to those of trustees. … …"
>
> (Emphasis added)

65. On 16.03.1954, a Bench of seven Judges of this Court speaking through B.K. Mukherjea, J.[29] held in ***The Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur***

Mutt[42], *inter alia,* that what had been laid down in series of decisions with regard to the rights of a Shebait would apply with equal propriety to the office of a Mahant. It was stated:-

> "As regards the property rights of a Mathadhipati, it may not be possible to say in view of the pronouncements of the Judicial Committee, which have been accepted as good law in this country ever since 1921, that a Mathadhipati holds the Math property as a life tenant or that his position is similar to that of a Hindu widow in respect to her husband's estate or of an English Bishop holding a benefice. He is certainly not a trustee in the strict sense. He may be, as the ***Privy Council***[26] says, a manager or custodian of the institution who has to discharge the duties of a trustee and is answerable as such; but he is not a mere manager and it would not be right to describe Mahantship as a mere office. A superior of a Math has not only duties to discharge in connection with the endowment but he has a personal interest of a beneficial character which is sanctioned by custom and is much larger than that of a Shebait in the debutter property. It was held by a Full Bench of the ***Calcutta High Court***[30] that Shebaitship itself is property, and this decision was approved of by the Judicial Committee in ***Ganesh*** v. ***Lal Behary***[31] and again in ***Bhabatarini v. Ashalata***[27]. The effect of the first two decisions, as the Privy Council pointed out in the last case, was to emphasise the proprietary element in the Shebaiti right and to show that though in some respects an anomaly, it was an anomaly to be accepted as having been admitted into Hindu law from an early date. This view was adopted in its entirety by this Court in ***Angurbala v. Debabrata***[21] and what was said in that case in respect to Shebaiti right could, with equal propriety, be applied to the office of a Mahant. Thus in the conception of Mahantship, as in Shebaitship, both the elements of office and property, of duties and personal interest are blended together and neither can be detached from the other. The personal or beneficial interest of the Mahant in the endowments attached to an institution is manifested in his large powers of disposal and administration and his right to create derivative tenures in respect to endowed properties; and these and other rights of a similar character invest the office of the Mahant with the character of proprietary right which, though anomalous to some extent, is still a genuine legal right. It is true that the

[42] (1954) SCR 1005

Mahantship is not heritable like ordinary property, but that is because of its peculiar nature and the fact that the office is generally held by an ascetic, whose connection with his natural family being completely cut off, the ordinary rules of succession do not apply.

(Emphasis added)

There is no reason why the word "property", as used in Article 19(1)(*f*) of the Constitution, should not be given a liberal and wide connotation and should not be extended to those well recognised types of interest which have the insignia or characteristics of proprietary right. As said above, the ingredients of both office and property, of duties and personal interest are blended together in the rights of a Mahant and the Mahant has the right to enjoy this property or beneficial interest so long as he is entitled to hold his office. To take away this beneficial interest and leave him merely to the discharge of his duties would be to destroy his character as a Mahant altogether. It is true that the beneficial interest which he enjoys is appurtenant to his duties and as he is in charge of a public institution, reasonable restrictions can always be placed upon his rights in the interest of the public. But the restrictions would cease to be reasonable if they are calculated to make him unfit to discharge the duties which he is called upon to discharge. A Mahant's duty is not simply to manage the temporalities of a Math. He is the head and superior of spiritual fraternity and the purpose of Math is to encourage and foster spiritual training by maintenance of a competent line of teachers who could impart religious instructions to the disciples and followers of the Math and try to strengthen the doctrines of the particular school or order, of which they profess to be adherents. This purpose cannot be served if the restrictions are such as would bring the Mathadhipati down to the level of a servant under a State department. It is from this standpoint that the reasonableness of the restrictions should be judged."

66. Within few months, in the decision in ***Mahant Sital Das vs. Sant Ram and others***[43] rendered on 08.04.1954, B.K. Mukherjea, J.[29] speaking for a Bench of four Judges stated:-

> "In the appeal before us the contentions raised by the parties primarily centre round the point as to whether after the death of Kishore Das, the plaintiff or the defendant No.3 acquired the rights of Mahant in regard to the Thakardwara in dispute. The law is well settled that succession to Mahantship of a Math or religious institutions is regulated by custom or usage of the particular institution, except where a rule of succession is laid down by the founder himself who created the endowment. As the Judicial Committee laid down – Vide *Genda Puri v. Chhatar Puri*[44], in one of the many cases on this point: *"in determining who is entitled to succeed as Mohunt, the only law to be observed is to be found in the custom and practice, which must be proved by testimony, and the claimant must show that he is entitled according to the custom to recover the office and the land and property belonging to it…… Mere infirmity of the title of the defendant, who is in possession, will not help the plaintiff:."*
>
> (Emphasis added)

67. In ***His Holiness Digya Darshan Rajendra Ram Doss v. Devendra Doss***[45], a Bench of three Judges of this Court observed:-

> **"7.** In our opinion, the rule of custom should prevail in all cases and if any aberrations have to be corrected such correction must take us in the direction of re-establishing the rule of custom. To that extent the principle laid down in the case of *Annasami Pillai* v. *Ramakrishna Mudaliar*[46] is a correct principle and has to be

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43 AIR 1954 SC 606
44 13 Ind App – page 105 (PC)(A)
45 (1973) 1 SCC 14
46 ILR 28 Mad 219

followed. That, however, does not resolve the difficulty in this case. Assuming that Chetan Doss was not a validly appointed Mahant so that his period of office is to be ignored, the question still arises whether in making a reversion to the customary rule of succession to the office of a Mahant such reversion is to operate from the point where Chetandoss' period ended or from the point when this had commenced. It is only an accident that in this case Chetandoss has a very brief period of office so that on his death it was at least possible to find one surviving disciple of the Mahant who held the office before Chetan Doss succeeded him. In most cases if there is a break in the customary rule it may not at all be possible to revert back to the customary succession if one has to start from the point where the original break had commenced. In such cases even if it may be possible to revert to the customary practice, it may not be possible to go back to the point where the customary line of succession had its original break. Thus, in this case though it has been possible to trace at least one person who was a disciple of Narayan Doss after whose death the customary practice was broken and the office handed over to an alleged interloper, even this lone survivor of the original line of succession is not a person who is competent to become the Mahant by the immemorial custom of the Mutt. Therefore, it is not possible at all to re-establish the customary line of succession if one treats the period of Chetan Doss' Mahantship as altogether non-existing. If we have to revert to the custom of the Mutt we cannot do so from the point of time when Narayan Doss died and Chetan Doss became the Mahant. We have to do so from the point when Chetan Doss died. After all, Chetandoss has been unquestionably the Mahant of the Mutt. It is true that on a subsequent re-examination of the whole matter, doubts have been cast on his title for the office but by common acceptance of the Chelas of the Mutt he had become the Mahant and had remained a Mahant till his death. Ignoring the fact that he was really the Mahant of this Mutt for a specific period does not help us to re-establish the rule of custom prevailing in this Mutt. The only possible way in which the old custom may be re-established is by making a fresh start from the point of the death of Chetandoss and that can only be done by allowing Devendra Doss to be the Mahant. The High Court has come to a clear finding that Devendra Doss is a North-Indian Brahmin and is therefore fit to hold the office of a Mahant according to the custom of this Mutt. The High Court has also found that he was the senior-most disciple of Chetandoss who had been the reigning Mahant up to the point of time when the dispute regarding succession arose. If Rajendra Ram Doss' right to become the

> Mahant be rejected on the ground that Chetandoss was perhaps an interloper the whole line of succession will be broken beyond repair or redemption, for, once it is accepted that Rajendra Ram Doss is not a North-Indian Brahmin there is no other living disciple of Narayan Doss who could restore the original line of succession. In our view it is not open to us to lay down a new rule of succession or to alter the rule of succession completely. The only way we can save the custom is by accepting something as fact which has so far been accepted by everybody concerned with the Mutt as a fact and which cannot any longer be undone without demolishing altogether the custom of the Mutt. In these circumstances we hold that Devendra Doss is entitled to succeed Chetan Doss as his senior-most disciple on the strength of the immemorial custom of this Mutt."
>
> (Emphasis added)

68. In ***Profulla Chorone Requitte***[20], the principles were summed up by this Court as under:-

> **"20.** Before dealing with these contentions, it will be appropriate to have a clear idea of the concept, the legal character and incidents of shebaitship. Property dedicated to an idol vests in it in an ideal sense only; ex necessitas, the possession and management has to be entrusted to some human agent. Such an agent of the idol is known as *shebait* in Northern India. The legal character of a *shebait* cannot be defined with precision and exactitude. Broadly described, he is the human ministrant and custodian of the idol, its earthly spokesman, its authorised representative entitled to deal with all its temporal affairs and to manage its property. As regards the administration of the debutter, his position is analogous to that of a trustee; yet, he is not precisely in the position of a trustee in the English sense, because under Hindu Law, property absolutely dedicated to an idol, vests in the idol, and not in the shebait. Although the debutter never vests in the shebait, yet, peculiarly enough, almost in every case, the *shebait* has a right to a part of the usufruct, the mode of enjoyment, and the amount of the usufruct depending again on usage and custom, if not devised by the founder.
>
> (Emphasis added)

21. As regards the service of the temple and the duties that appertain to it, he is rather in the position of the holder of an office; but even so, it will not be quite correct to describe shebaitship as a mere office. "Office and property are both blended in the conception of shebaitship". Apart from the obligations and duties resting on him in connection with the endowment, the *shebait* has a personal interest in the endowed property. He has, to some extent, the rights of a limited owner."

22. Shebaitship being property, it devolves like any other species of heritable property. It follows that, where the founder does not dispose of the *shebaiti* rights in the endowment created by him, the shebaitship devolves on the heirs of the founder according to Hindu Law, if no usage or custom of a different nature is shown to exist. *[Gossamee Shree Greedharreejee* v. *Ramanlaljee*.[24]]

23. Then, there is a distinction between a public and private debutter. In a public debutter or endowment, the dedication is for the use or benefit of the public. But in a private endowment, when property is set apart for the worship of a family idol, the public are not interested. The present case is one of a private debutter. The distinction is important, because the results logically following therefrom have been given effect to by courts, differently.

24. According to English law, the beneficiaries in a private trust, if sui juris and of one mind, have the power or authority to put an end to the trust or use the trust fund for any purpose and divert it from its original object. Whether this principle applies to a private endowment or debutter created under Hindu Law, is a question on which authorities are not agreed. In *Doorganath Roy* v. *Ram Chunder Sen*[47] it was observed that while the dedication is to a public temple, the family of the founder could not put an end to it, but "in the case of a family idol, the consensus of the whole family might give the (debutter) estate another direction" and turn it into a secular estate.

25. Subsequently, in *Pramatha Nath Mullick* v. *Pradhyumna Kumar Mullick*[48] the Judicial Committee clarified that the property cannot be taken away from the idol and diverted to other purposes without the consent of the idol through its earthly agents

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[47] LR 4 IA 52 : ILR 2 Cal 233
[48] 52 IA 245 : AIR 1925 PC 139

> who, as guardians of the deity, cannot in law consent to anything which may amount to an extinction of the deity itself."

69. Recently, the Constitution Bench of this Court in ***M. Siddiq (dead) through LRs vs. Mahant Suresh Das and others (Ram Janmabhumi Temple Case)***[49] *inter alia*, dealt with the role and position of a shebait. After considering the decisions on the point, it was stated:-

> **"425.** Courts recognise a Hindu idol as the material embodiment of a testator's pious purpose. Juristic personality can also be conferred on a *Swayambhu* deity which is a self-manifestation in nature. An idol is a juristic person in which title to the endowed property vests. The idol does not enjoy possession of the property in the same manner as do natural persons. The property vests in the idol only in an ideal sense. The idol must act through some human agency which will manage its properties, arrange for the performance of ceremonies associated with worship and take steps to protect the endowment, inter alia by bringing proceedings on behalf of the idol. The shebait is the human person who discharges this role.
>
> … … …
>
> **429.** The recognition of a person or a group of persons as shebaits is a substantive conferment of the right to manage the affairs of the deity. A necessary adjunct of the status of a shebait, is the right to brings actions on the behalf of an idol and bind it and its properties to the outcomes. The purpose for which legal personality is conferred upon an idol as the material embodiment of the pious purpose is protected and realised through the actions of the human agent, that is, the shebait. The shebait is entrusted with the power and the duty to carry out the purpose of the donor in respect of the idol and its properties. In the vast majority of cases, a shebait is appointed in accordance with the terms of a deed of dedication by which property is endowed to an idol. It is for the protection of this property that the law recognises either

[49] (2020) 1 SCC 1

the donor or a person named in the deed of endowment as the shebait. In the absence of an expressly appointed or identified shebait, the law has ensured the protection of the properties of the idol by the recognition of a de facto shebait. Where a person is in complete and continuous management of the deity's affairs coupled with long, exclusive and uninterrupted possession of the appurtenant property, such a person may be recognised as a shebait despite the absence of a legal title to the rights of a shebait. This will be adverted to in the course of the judgment.

(Emphasis added)

… … …

434. In addition to the duties that must be discharged in relation to the debutter property, a shebait may have an interest in the usufruct of the debutter property. In this view, shebaitship is not an office simpliciter, but is also property for the purposes of devolution[50]. This view has been affirmed by this Court in *Angurbala Mullick* v. *Debabrata Mullick*[21]. The controversy in that case was whether the appellant, as the widow of the shebait, was entitled to act as the shebait of the idol instead of the minor son of the shebait born from his first marriage who was the respondent. It was contended that the office of shebaitship would devolve in accordance with the Hindu Women's Right to Property Act, 1937. B.K. Mukherjea, J. speaking for a four-Judge Bench of this Court accepted this contention and held: (*Angurbala Mullick case*[21] (AIR p. 296, para 11).

> "*11.* … But though a shebait is a manager and not a trustee in the technical sense, it would not be correct to describe the shebaitship as a mere office. The shebait has not only duties to discharge in connection with the endowment, but he has a beneficial interest in the debutter property. As the Judicial Committee observed in the above case, in almost all such endowments the shebait has a share in the usufruct of the debutter property which depends upon the terms of the grant or upon custom or usage. Even where no emoluments are attached to the office of the shebait, he enjoys some sort of right or interest in the endowed property which

50 Approved by the Privy Council in *Ganesh Chunder Dhur v. Lal Behary Dhur,* 1936 SCC OnLline PC 53 : (1935-36) 63 IA 448 and *Bhabatarini Debi v. Ashalata Debi*, 1943 SCC OnLine PC 1 : (1942-43) 70 IA 57

> partially at least has the character of a proprietary right. Thus, in the conception of *shebaiti* both the elements of office and property, of duties and personal interest, are mixed up and blended together; and one of the elements cannot be detached from the other. It is the presence of this personal or beneficial interest in the endowed property which invests shebaitship with the character of proprietary rights and attaches to it the legal incidents of property."

> The Court held that a shebait has a beneficial interest in the usufruct of the debutter property. This beneficial interest is in the form of a proprietary right. Though the role of the shebait is premised on the performance of certain duties for the idol and the benefits are appurtenant, neither can be separated from the other. Thus, office and property are both blended in shebaitship, the personal interest of a shebait being *appurtenant* to their duties.[51]"

70. Reliance was however placed by Mr. Gupta, learned Senior Advocate on the decision of this Court in ***Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan and others***[52] to submit that mere right to manage the debutter property when no emoluments were being drawn by the Manager was not found to be protected under Articles 19(1)(f) and 31(2) of the Constitution of India by a Bench of five Judges of this Court. This Court, speaking through Gajendragadkar, J. (as the learned Chief Justice then was) had observed:-

> "The temple of Shrinathji at Nathdwara holds a very high place among the Hindu temples in this country and is looked upon with great reverence by the Hindus in general and the Vaishnav followers of Vallabha in particular. As in the case of other ancient

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51 Affirmed in *Badri Nath v. Punna,* (1979) 3 SCC 71: *Profulla Chorone Requitte v. Satya Chorone Requitte,* (1979) 3 SCC 409

52 (1964) 1 SCR 561

revered Hindu temples, so in the case of the Shrinathji temple at Nathdwara, mythology has woven an attractive web about the genesis of its construction at Nathdwara. Part of it may be history and part may be fiction, but the story is handed down from generation to generation of devotees and is believed by all of them to be true.

… … …

The question as to whether a Hindu temple is private or public has often been considered by judicial decision. A temple belonging to a family which is a private temple is not unknown to Hindu law. In the case of a private temple it is also not unlikely that the religious reputation of the founder may be of such a high order that the private temple founded by him may attract devotees in large numbers and the mere fact that a large number of devotees are allowed to worship in the temple would not necessarily make the private temple a public temple. On the other hand, a public temple can be built by subscriptions raised by the public and a deity installed to enable all the members of the public to offer worship. In such a case, the temple would clearly be a public temple. Where evidence in regard to the foundation of the temple is not clearly available, sometimes, judicial decisions rely on certain other facts which are treated as relevant. Is the temple built in such an imposing manner that it may *prima facie* appear to be a public temple? The appearance of the temple of course cannot be a decisive factor; at best it may be a relevant factor. Are the members of the public entitled to an entry in the temple? Are they entitled to take part in offering service and taking Darshan in the temple? Are the members of the public entitled to take part in the festivals and ceremonies arranged in the temple? Are their offerings accepted as a matter of right? The participation of the members of the public in the Darshan in the temple and in the daily Acts of worship or in the celebration of festival occasions may be a very important factor to consider in determining the character of the temple….

…..If the temple is a public temple, under Hindu Law the idol of Shrinathji is a juridical person and so, the ownership of the temple and all its endowments including offerings made before the idol constitute the property of the idol….

… … …

That takes us to the question as the nature and extent of the Tilkayat's rights in regard to the temple property. It is clear that the Tilkayat never used any income from the property of the temple for his personal needs or private purpose. It is true that the learned Attorney General suggested that this consistent course of conduct spreading over a large number of years was the result of what he described as self-abnegation on the part of the tilkayats from generation to generation and from Tilkayat's point of view, it can be so regarded because the Tilkayat thought and claimed that the temple and his properties together constituted his private property. But once we reach the conclusion that the temple is a public temple and the properties belonging to it are the properties of the temple over which the Tilkayat has no title or right, we will have to take into account the fact that during the long course of the management of this temple, the Tilkayat has never claimed any proprietary interest to any part of the usufrcut of the properties of the temple for his private personal needs, and so, that proprietary interest of which Mr. Ameer Ali spoke in dealing with the position of the Mahant and the Shebait and to which this Court referred in the case of *commissioner, Hindu Religious endowments, Madras*[42] is lacking in the present case. What the Tilkayat can claim is merely the right to manage the property, to create lease in respect of the properties in a reasonable manner and the theoretical right to alienate the property for the purpose of the temple; and be it noted that these rights could be exercised by the Tilkayat under the absolute and strict supervision of the Darbar of Udaipur. Now, the right to manage the property belonging to the temple, or the right to create a lease of the property on behalf of the temple, or the right to alienate the property for the purpose of the temple under the supervision of the Darbar cannot, in our opinion, be equated with the totality of the powers generally possessed by the Mahant or even the Shebait, and so, we are not prepared to hold that having regard to the character and extent of the rights which can be legitimately claimed by the Tilkayat even on the basis that he was a Mahant governed by the terms of the Firman, amount to a right to property under Article 19(1)(f) or constitute property under Article 31(2).

(Emphasis added)

Besides, we may add that even if it was held that these rights constituted a right to hold property their regulation by the relevant provisions of the Act would undoubtedly be protected by Art. 19(5). The temple is a public temple and what the legislature has purported to do is to regulate the administration of the properties

> of the temple by the Board of which the Tilkayat is and has to be a member. Having regard to the large estate owned by the Tilkayat and having regard to the very wide extent of the offerings made to the temple by millions of devotees from day to day; the legislature was clearly justified in providing for proper administration of the properties of the temple. The restrictions imposed by the Act must, therefore, be treated as reasonable and in the interests of the general public."

71. In the aforesaid case, this Court was called upon to consider the matter in the context of challenge to the Nathadwara Temple Act, 1959 (Rajasthan Act 13 of 1959), *inter alia,* on the grounds that said Act violated the rights guaranteed under Articles 19(1)(f), 25(1), 26 (b) & (c) and 31(2) of the Constitution. The Act under challenge, enacted by the State, had sought to change the management which was earlier in the hands of the Tilkayat. On facts, it was noticed that the petitioner therein was appointed as Tilkayat (Manager of the Temple) under a Firman issued by the Rana of Udaipur on December 31, 1934 which provided that the Udaipur Darbar had absolute right to supervise that the property dedicated to the shrine was used for legitimate purpose and to take any measures for the management of the shrine. It was held by this Court that said Firman was law by which the affairs of said temple and succession to the office of the Tilkayat were governed after its issue. This Court thereafter held:-

> "Having regard to the unambiguous and emphatic words used in clause 1 of the Firman and having regard to other drastic provisions contained in its remaining clauses, we are inclined to think that this Firman made the Tilkayat for the time being a Custodian, Manager and Trustee, and nothing more. As a Custodian or Manager, he had the right to manage the properties of the temple, subject, of course, to the overall supervision of the Darbar, the right of the Darbar in that behalf being absolute. He was also a Trustee of the said property and the word "trustee" in the context must mean trustee in the technical legal sense. In other words, it is not open to the Tilkayat to claim that he has rights of a Mahant or a Shebait; his rights are now defined and he cannot claim any higher rights after the Firman was issued."
>
> (Emphasis added)

In the backdrop of the finding that the Tilkayat could not claim rights of a Mahant or a Shebait, the challenge on the grounds that said Act violated the rights under the Constitution was negated.

On the other hand, after considering the relevant decisions on the point, in ***Angurbala Mullick***[21], this Court had very clearly observed, that even where no emoluments are attached to the office of the shebait, he enjoys some sort of right or interest in the debutter property which partially has the character of a proprietary right. In the decision of a Bench of seven Judges in ***Shirur Mutt Case***[42] the decision in ***Angurbala Mullick***[21] was referred to with approval. In the recent decision of the Constitution Bench in ***M. Siddiq (Ram Janmabhumi Temple Case)***[49], the concerned portion from ***Angurbala Mullick***[21] was also quoted in paragraph 434.

In the premises, in our view, mere factum that no emoluments are attached to the office of the Shebait would not make any difference to the character of the right and interest of the Shebait. Though this conclusion is based on the decisions referred to above, reference may additionally be made to Para 5.5 of the Book titled "*The Hindu Law of Religious Endowments and Charitable Trusts*", 4th Edition edited by Hon. P.B. Gajendragadkar, former Chief Justice of India, which points in the same direction.

72. The principles that emerge from the long line of decisions referred to in the preceding paragraphs can thus be summed up:-

> (i) According to Hindu law, when the worship of a thakoor has been founded, the Shebaitship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to show a different mode of devolution. (***Gossamee Sree Greedharreejee vs. Rumanlolljee Gossamee[24]***)
>
> (ii) Unless the founder has disposed of the Shebaitship in any particular manner - and this right of disposition is inherent in the founder - or except when usage or custom of a different nature is proved to exist, Shebaitship like any other species

of heritable property follows the line of inheritance from the founder. ***(Angurbala Mullick vs. Debabrata Mullick[21])***

(iii) The legal character of a *Shebait* cannot be defined with precision and exactitude. Broadly described, he is the human ministrant and custodian of the idol, its earthly spokesman, its authorised representative entitled to deal with all its temporal affairs and to manage its property. As regards the administration of the debutter, his position is analogous to that of a trustee; yet, he is not precisely in the position of a trustee in the English sense, because under Hindu Law, property absolutely dedicated to an idol, vests in the idol, and not in the shebait. **(*Profulla Chorone Requitte v. Satya Chorone Requitte[20]*)**

(iv) Shebaitship in its true legal conception involves two ideas: The ministrant of the deity and its manager; it is not a bare office but an office together with certain rights attached to it. ***(Monohar Mukherjee vs. Bhupendra Nath Mukherjee and Ors.[30])***

(v) The effect of the decisions in ***Ganesh*** vs. ***Lal Behary[31]*** and ***Bhaba Tarini Debi vs. Asha Lata Debi[27]*** as the Privy Council pointed out in the latter case, was to emphasise the proprietary element in the Shebaiti right and to show that

though in some respects an anomaly, it was an anomaly to be accepted as having been admitted into Hindu law from an early date. (***The Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt***[42])

(vi) It is settled by the pronouncement of the Judicial Committee in ***Vidya Varuti v. Balusami***[26] that the relation of a Shebait in regard to debutter property is not that of a trustee to trust property under the English law. ***(Angurbala Mullick vs. Debabrata Mullick***[21]***)***

(vii) In a Hindu religious endowment the entire ownership of the dedicated property is transferred to the deity or the institution itself as a juristic person and the Shebait or Mahant is a mere manager. ***(Angurbala Mullick vs. Debabrata Mullick***[21]***)***

(viii) In the conception of Mahantship, as in Shebaitship, both the elements of office and property, of duties and personal interest are blended together and neither can be detached from the other. The personal or beneficial interest of the Mahant in the endowments attached to an institution is manifested in his large powers of disposal and administration and his right to create derivative tenures in respect to

endowed properties; and these and other rights of a similar character invest the office of the Mahant with the character of proprietary right which, though anomalous to some extent, is still a genuine legal right. (***The Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt***[42])

(ix) Even where no emoluments are attached to the office of the Shebait, he enjoys some sort of right or interest in the endowed property which partially at least has the character of a proprietary right. Thus, in the conception of Shebait both the elements of office and property, of duties and personal interest, are mixed up and blended together; and one of the elements cannot be detached from the other. It is the presence of this personal or beneficial interest in the endowed property which invests Shebaitship with the character of proprietary rights and attaches to it the legal incidents of property. ***(Angurbala Mullick vs. Debabrata Mullick***[21]***)***

(x) Succession to Mahantship of a Math or religious institutions is regulated by custom or usage of the particular institution, except where a rule of succession is laid down by the founder himself who created the endowment. ***(Sital Das vs. Sant Ram and others***[43]***)***

(xi) The rule of custom should prevail in all cases and if any aberrations have to be corrected such correction must take us in the direction of re-establishing the rule of custom. ***(His Holiness Digya Darshan Rajendra Ram Doss v. Devendra Doss[45])***

(xii) It is not open to the Court to lay down a new rule of succession or to alter the rule of succession completely. ***(His Holiness Digya Darshan Rajendra Ram Doss v. Devendra Doss[45])***

(xiii) In the absence of an expressly appointed or identified Shebait, the law has ensured the protection of the properties of the idol by the recognition of a de facto Shebait. (***M. Siddiq through LRs vs. Mahant Suresh Das and others (Ram Janmabhumi Temple Case)[49]***

73. As laid down by this Court, when the idol is installed and the temple is constructed or an endowment is founded, the shebaitship is vested in the founder and unless the founder himself has disposed of the shebaitship in a particular manner or there is some usage or custom or circumstances showing a different mode of devolution, the shebaitship like any other species of heritable property follows the line of inheritance from the founder; and it is not

open to the Court to lay down a new rule of succession or alter the rule of succession. It has also been laid down that the shebaitship has the elements of office and property, of duties and personal interest blended together and they invest the office of the shebait with the character of proprietary right. It has further been laid down that the shebait is the custodian of the idol, its earthly spokesman and the human ministrant; is entitled to deal with the temporal affairs and to manage the property of the idol; and even where no emoluments are attached to the office of the shebait, he has the right or interest in the endowed property which has the characteristics of a proprietary right.

If the instant case is considered on the touchstone of these settled principles, it is clear that after the major fire that occurred in the year 1686, the Temple was reconstructed and a new idol was installed by the King of Travancore Shri Marthand Varma and since then right upto the day the Covenant was signed, the management of the Temple had always been with the Kings of Travancore. The shebaitship or the managership of the Temple passed on to the succeeding Kings, coming from the royal family of Travancore. This chain was unbroken till the then Ruler of Travancore signed the Covenant in May 1949.

It may be noted here that on 10.08.1947 a proclamation was issued by the Ruler declaring that in matters of succession to the Rulership and to the throne and for all other purposes, the royal family was governed by the *Marumakkathayam* law, as modified by the custom and usage of the royal family. In a matter raising issues of succession to certain properties of the Ruler of Travancore, this Court in ***Revathinnal Balagopala Varma***[13] had found that the devolution in the royal family was from Ruler to Ruler. The shebaitship of the Temple had also passed from Ruler to Ruler consistent with the principles of succession otherwise applicable to the royal family.

74. We must thus conclude that as on the day when the Covenant was entered into by the Ruler of the Covenanting State of Travancore, apart from other incidents which normally follow the rulership, he was holding the office of Shebait of the Temple and represented a continuous and unbroken line of successive Shebaits traced from the original founder; and being a Shebait of the Temple, he was having all the rights and interest as laid down by decisions referred to hereinabove.

75. The questions still remain whether the office of Shebaitship of the Temple was part of the duties of the Ruler purely in his capacity as a Ruler, and

said office was an incident of his rulership, or such office was totally unconnected to and independent of the rulership. These questions will be considered along with other questions which arise for consideration in the next segment.

B] <u>Effect of the Covenant that was entered into in May 1949</u>

76. The Covenant, relevant parts of which are quoted in paragraph 11 hereinabove, was entered into by the Maharajas of Travancore and Cochin for the formation of the United State of Travancore and Cochin and for purposes set out therein.

A) In terms of Article III, as from the appointed day, all rights, authority and jurisdiction belonging to "the Ruler" of either of the Covenanting States which appertained or were incidental to the Government of the respective States, vested in the United State. Similarly, all duties and obligations of "the Ruler" of either of the Covenanting States pertaining or incidental to the Government of that State devolved on the United State which would now be discharged by the United State.

Thus, all functions of the Rulers of either of the Covenanting States concerning or related to the Government of that State stood vested in or devolved on the United State.

B) In terms of Article IV "the present Ruler" of Travancore would be Rajpramukh for the United State and would hold such office "during his lifetime". In terms of Article VI, the executive authority of the United State would be exercised by the Rajpramukh subject to certain stipulations in said Article; as per Article VII, the Rajpramukh would be guided by the aid and advice of the Council of Ministers; while in terms of Article X, the Legislature for the United State would consist of the Rajpramukh and the Legislative Assembly. Article IX then obliged the Rajpramukh to execute, on behalf of the United State, an Instrument of Accession in accordance with the provisions of Section 6 of the Government of India Act, 1935. In terms of Article XXI, the Rulers of Travancore and Cochin would, however, continue to have and exercise their "present powers" of suspension, remission or commutation of death sentences.

Thus, on the appointed day or the Covenant becoming effective, a new role or capacity, that of Rajpramukh of the United State, was assumed by the then Ruler of Travancore. No such role was contemplated for the then Ruler

of Cochin. Their earlier capacities as the Rulers or Heads of the respective Covenanting States thus stood terminated, save and except what was stated in Article XXI, where they could still exercise their "present powers" of suspension, remission or commutation of death sentences. Though, as Rajpramukh, the then Ruler of Travancore would have executive authority over the United State which would include areas of the erstwhile Cochin State, his powers, in terms of Article XXI, were confined to the areas of the erstwhile Travancore State, while the then Ruler of Cochin, who was not given any function in the United State, would continue to have and exercise "present powers" under Article XXI in the areas of the erstwhile Cochin State.

C) Article XIV entitled the Ruler of each Covenanting State to receive Privy Purses from the revenue of the United State. As regards the Ruler of the Covenanting State of Travancore, the entitlement was restricted to "the present Ruler", and not to his successors. In terms of Article XV, the Ruler of each Covenanting State would be entitled to the full ownership, use and enjoyment of all private properties. As per Article XVI, the Ruler of each Covenanting State, as also the members of his family, would be entitled to all personal privileges, dignities and titles enjoyed by them, immediately before 15.08.1947. Article XVII assured that succession to the Gaddi of each

Covenanting State and to the personal rights, privileges, dignities and titles of the Ruler would be in terms of law and custom.

Apart from Article IV, the expression "the present Ruler" finds mention in Article XIV. Articles XIV, XV and XVI conferred certain other entitlements in favour of the Rulers of the Covenanting States and in some cases in favour of the members of family. The succession to the Gaddi and other incidents stipulated in Article XVII, would be governed in accordance with law and custom.

D) Article VIII is of importance and significance for the present purposes. In terms of Sub-Article 'a', the obligation of the Covenanting State of Travancore to contribute from its general revenue a sum of Rs.50 lakhs every year to the Dewaswom Board, and a sum of Rs.1 lakh every year to Shri Pandaravaga would, after the Covenant, be the obligation of the United State. In terms of Sub-Article 'b', *the administration of the Temple, Sri Pandaravaga properties and all other properties and funds of the Temple now vested in trust in the Ruler of the Covenanting State of Travancore* and the sum of Rs.1 lakh transferred in terms of Sub-Article 'a' and Rs.5 lakhs contributed every year towards the expenditure of the Temple would be conducted *subject to the control and supervision of the Ruler of Travancore* by an Executive Officer

appointed by him. In terms of Sub-Article 'c', the administration of the incorporated and unincorporated Devaswoms and of Hindu Religious Institutions and Endowments and all their properties and funds which were under the management of the Ruler of the Covenanting State of Travancore would stand transferred and vested in the Travancore Dewaswom Board. It further dealt with manner of apportionment of the contribution of Rs.50 lakhs as stipulated in Sub-Article 'a'. In terms of Sub-Article 'd', the administration of the incorporated and unincorporated Dewaswoms and of Hindu Religious Institutions which were under the management of the Ruler of the Covenanting State of Cochin would vest in the Cochin Dewaswom Board. However, "the Ruler of Cochin" would continue to exercise regulation and control of all rituals and ceremonies in respect of two temples mentioned in the proviso. Sub Articles 'e' and 'f' thereafter dealt with compositions of the respective Dewaswom Boards.

77. Sub-Article 'b' of Article VIII used the expression "*now vested in trust in the Ruler of the Covenanting State of Travancore*" and thus acknowledged the factum that the administration in respect of the Temple, Sri Pandaravaga properties and all other properties and funds of the Temple was already vested in the Ruler of Covenanting State of Travancore. Sub-Article 'b' further

contemplated that with effect from the appointed day, the administration of the Temple, Sri Pandaravaga properties and all other properties and funds of the Temple would be subject to the control and supervision of the "*Ruler of Travancore*". This Sub-Article was the centre of debate and fulcrum of submissions by the learned counsel appearing for various parties.

On one hand, the submissions on behalf of the appellants and the Intervenors supporting them, stressed the expression "now vested in trust" along with the other material on record to emphasize the acknowledged status of "the Ruler" as Shebait of the Temple as on the day the Covenant was entered into. They also relied upon the latter part of the Sub-Article to submit that such status remained unaffected and was certainly intended to be continued.

On the other hand, the submissions on behalf of the State and private respondents sought to emphasize that the continuation of the status was in favour of "the Ruler" in his capacity as "the Ruler".

78. According to the Covenant, insofar as the transfer of sovereign power and all incidental aspects connected therewith were concerned, the Ruler of the Covenanting State of Travancore was involved at two stages. Under the first stage, the transfer was contemplated from him in his capacity as the Head of the Covenanting State of Travancore in favour of the United State and under

the second stage as Rajpramukh of the United State he was obliged to execute an Instrument of Accession in terms of Article IX. On and with effect from the appointed day in terms of the Covenant, his role as the Head of the State of Travancore came to an end and he became the Rajpramukh of the United State, in whom certain powers and rights got vested by virtue of Articles VI, VII and X. Theoretically, as Rajpramukh, he could as well be vested with powers of suspension, remission or commutation of death sentences in respect of the entire area of the United State but the intent was to retain such powers in the erstwhile Ruler of Cochin State, who had no role in the new dispensation with respect to the United State and for this reason, Article XXI used the expression "the Rulers of Travancore and Cochin". The fact that this was a departure and as an exception to the general mechanism is evident from the expression "Notwithstanding anything contained in the preceding provisions of this Covenant". Therefore, despite generality of the earlier Articles of the Covenant, only with respect to matters specified in Article XXI, "the Ruler of Travancore" continued to have the powers which he was enjoying as the Head of the State of Travancore before the Covenant came into effect. Thus, wherever the Covenant wanted him to continue to exercise certain powers

which as Head of the State of Travancore had resided or vested in him, the Covenant made an express exception and stipulated so.

79. What then would be the import of the expression "the Ruler of Travancore" in the latter part of Sub-Article 'b' of Article VIII is the question that needs to be addressed.

A) As discussed above, the only place in the Covenant where the person who signed as the Ruler of the Covenanting State would continue to enjoy his erstwhile powers as the Head of that Covenanting State, was Article XXI. The references as "the Ruler of the Covenanting State" and as the Ruler of Travancore or as "the Ruler of Cochin" in rest of the Articles, were only by way of reference to the person concerned, and not by way of reference to or because of his official capacity as the Ruler. This gets fortified by proviso to Sub-Article 'd' of Article VIII, in terms of which "the Ruler of Cochin" would continue to exercise regulation and control with respect to rituals and ceremonies in certain temples. Upon the Covenant coming into effect, he had lost his capacity as the Head of the erstwhile State of Cochin. Thus, the retention of the powers under said proviso in him was not because he had any official status as Head of the State after the appointed day in terms of the Covenant but only with a view to describe and locate the person concerned. A

person answering the description in said proviso would continue to exercise such power. Similar thought can, therefore, be validly entertained that the description in the latter part of Sub-Article 'b' of Article VIII was only to refer to or locate the person.

B) Furthermore, the historical background and the association of the royal family with the Temple and the nature of Shebaitship held by a successive line of Rulers from time to time, were such that the Covenant designedly let the management of the affairs of the Temple – with the royal family, and in the hands of the Ruler of Travancore, principally because his official capacity or status as the erstwhile Head of the State apparently had nothing to do with the capacity as Shebait of the Temple.

As discussed in the earlier segment, the Shebaitship was always in the royal family and the Ruler represented the unbroken line of Shebaits. Not only the excerpts from the book written by Mr. V.P. Menon indicate the deep sense of attachment and devotion of the ruling family to the Temple and Sri Padmanabhaswamy, but some reflection in that behalf is also to be noticed in the *White Paper on the Indian States* which was initially prepared in July 1948 and updated in March 1950 by Government of India, Ministry of States. It dealt with the United State of Travancore and Cochin in paragraphs 139 to 145.

Paragraphs 141 and 142 dealt with Devaswoms-Hindu Temples and properties attached to them in the two States including that of the temple of Sri Padmanabhaswamy as under:-

> "141. One of the special features of the Covenant is the arrangement in respect of Devaswoms – Hindu temples – and property attached to them in the two States including the temple of Shri Padmanabhaswami the tutelary deity of the ruling family of Travavancore. In Travancore alone, apart from this important shrine, on the maintenance of which the State was spending over Rs.1 million per annum, there are 348 major Devaswoms and 1123 minor Devaswoms. Large revenues are derived by the State from the properties which were attached to these Devaswoms and provision was made by the State for the maintenance of Devaswoms, from time to time, at varying figures. Hindu opinion in the State was unanimous that not only should the continued payment of the existing allotments for the maintenance of Devaswoms be guaranteed but that adequate compensation should also be given in respect of the properties of the Devaswoms taken over by the State since 1912, and the profits derived from them. The annual contribution thus claimed ranged from rupees ten to twenty millions. The Covenant now provides for a fixed contribution of Rs.5.1 millions for the maintenance of Devaswoms in Travancore out of which a sum of Rs.600,000 is to be contributed towards the maintenance of the Shri Padmanabhaswami temple.
>
> 142. The most important departure from the past practice, which the provisions of the Covenant regarding the Devaswoms involve, is that, except in the case of Shri Padmanabhaswami temple, in the management of which the Ruler will be assisted by an Advisory Committee, the administration of Devaswoms will vest in two Boards to be set up in these States on which not only the orthodox Hindus but the Harijans also will be represented. This introduces a far-reaching temple reform in that under the arrangement prescribed in the Covenant the Harijans will secure a share both in the control of the temples and appointments in the Devaswoms Department, a position hitherto denied to them."

It may be mentioned here that said White Paper generally gave account of all such Covenants entered into by various Rulers of the erstwhile Indian States and except the Temple of Sri Padmanabhaswamy which was specifically dealt with in the Covenant that we are presently concerned with, no other temple in any such Indian State was so specifically and separately dealt with. In that sense, Article VIII of the Covenant has certain unique features.

C) The White Paper also set out, the Covenant entered into by the Rulers of Gwalior, Indore and certain other States in Central India for the formation of the United Madhya Bharat which in Sub-Article (2) of Article VII provided:-

> "(2) Subject to any directions or instructions that may from time to time be given by the Government of India in this behalf, the authority –
>
> (a) to make laws for the peace and good government of any scheduled area,
>
> (b) to raise, maintain and administer the military forces of the United State, and
>
> (c) to control the administration of the fund in Gwalior known as the Gangajali Fund and of any other existing fund of a similar character in any other Covenanting State.
>
> shall vest exclusively in the Raj Pramukh"

The control and administration of the Fund known as *Gangajali Fund* and of any other existing fund of a similar character in any other Covenanting

State thus vested exclusively in the Raj Pramukh. The White Paper in paragraph 159 (iv) described *Gangajali Fund* as under:-

> "(iv) *Gangajali Fund.* - This Fund, which has a corpus of Rs.16,237,000/- was created by the Scindias as a special reserve fund for use during grave emergency such as famine. His Highness the Maharaja of Gwalior has made this fund available for public benefit. Subject to any instructions or directions from the Government of India, the authority to control and administer the fund is vested in the Rajpramukh of Madhya Bharat."

In terms of aforestated Article VII (2) the vesting was in favour of the Raj Pramukh, and not in favour of any concerned Ruler. The Raj Pramukh, in terms of Article III of said Covenant was to be elected by the Council of Rulers. Consequently, though Gangajali Fund was constituted by the then Maharaja of Gwalior, the control was not vested in the Ruler of Gwalior, but in the Raj Pramukh. This also meant that the vesting was in his official capacity as Raj Pramukh, who could be any other Ruler, and not strictly the Ruler of Gwalior.

The Madhya Bharat Gangajali Fund Trust Act, 1954 was thereafter enacted. In terms of Section 6 of said Act, the properties comprising of the Gangajali Fund vested in the Trustees. In accordance with Section 4 as it originally stood, the Rajpramukh, the Chief Minister of the State, and a nominee of the Rajpramukh were designated Trustees. Later there were amendments to this Section. Section 7 stipulated that the income from the Fund

be released for schemes relating to (a) relief of famine; (b) medical relief; and (c) education. The Act was repealed in 2003 and after discharging the liabilities of the Trust, the residue was directed to be applied to three educational institutions.

Article VII (2) of said Covenant and the consequential legislation are clear indication that even where a Trust was constituted for certain charitable purposes by the then Maharaja of Gwalior, the administration of such Trust was not vested in the Ruler of Gwalior. On the other hand, the Trust, in terms of the Covenant itself, was directed to be vested in the Raj Pramukh in his official capacity.

In comparison, the vesting of administration of the Temple in the instant case was not only acknowledged by the Covenant to be in trust with the Ruler of the Covenanting State of Travancore but such administration was to continue subject to the control and supervision of "the Ruler of Travancore" even after the Covenant. This illustration further emphasizes that "the control and supervision" of the Ruler of Travancore was not in any official capacity.

D) It is also pertinent to note here that other Devaswoms and Endowments in the erstwhile State of Travancore also used to be under the control of the

erstwhile Ruler of Travancore. Going by the Travancore Interim Constitution Act which is referred to in detail in paragraph 10 hereinabove, though such control was to be retained by the ruling family, the Covenant expressed clearly to the contrary. Sub-Article 'c' of Article VIII acknowledged that administration with respect to said other Devaswoms and Endowments and other properties was earlier under the management of the Ruler of the Covenanting State of Travancore. It, however, stated that with effect from the appointed day in terms of the Covenant, such management would now vest in Travancore Devaswom Board. This part also finds mention in the relevant paragraphs of the White Paper as quoted above.

Thus, wherever the official capacity of the Head of the State was responsible for enabling the Ruler to be in charge of the management or administration, upon ceasing to have such capacity, the erstwhile Ruler would have nothing to do with the management of such other Devaswoms or Endowments. In contrast, the case with respect to the Temple and other properties referred to in Sub-Article 'b' stands on a completely different footing.

In the premises, it must be held that the expression "the Ruler of Travancore" used in the latter part of Sub-Article 'b' of Article VIII was only by way of reference and the purport of said Sub-Article was not to invest the said authority and power because he was the Ruler or enjoyed and represented any official status.

80) A subsidiary issue still needs to be dealt with, and that is whether the references in said Article were only to the person who was the Ruler at the time the Covenant was entered into and would not include successors to said Ruler.

The survey of the concerned Articles of the Covenant as set out in paragraph 11 hereinabove shows that wherever special attributes or rights were designed to be conferred upon and restricted to "the present Ruler", the Covenant was quite specific. Articles IV and XIV are clear instances in that behalf. On the other hand, whenever the person, who as the Ruler, had signed the Covenant was to be referred, the expressions used in the Covenant had been "the Ruler of the Covenanting State" or "the Ruler of Travancore". These expressions were only to identify the person who was the Ruler as stated earlier. Thus, the rights such as the entitlements to Privy Purses and the ownership, use and enjoyment of private properties and so also to personal rights, privileges, titles and dignities were concerned, they were assured to "the Ruler of the

Covenanting State". In addition, certain rights were also granted to the members of the family and succession to the Gaddi, personal rights and privileges was expressly assured. Whether those rights or entitlements were intended to be enjoyed by the successor to the person who signed the Covenant, would depend upon the nature and content of such right or entitlement. In so far as the right with respect to Privy Purse payable to the Ruler of Travancore was concerned, it was expressly limited or confined to "the present Ruler", and obviously no successor could claim such entitlement. But rest of the incidents or entitlements referred to in said Articles were without such restriction. Additionally, once succession to the Gaddi of each Covenanting State and to the personal rights and privileges etc. was guaranteed in accordance with law and custom by Article XVII, these incidents were designed to be available for enjoyment by the succeeding generations or successors according to law and custom. If the matter is considered purely from the perspective of Shebaitship of the Temple, or the right of administration referred to in the latter part of Sub-Article 'b' of Article VIII, going by the general law of Shebaitship as discussed in the earlier segment, and the succession according to law and custom, every successor to the Ruler who signed the Covenant would be entitled to such right.

There is nothing in any of the Articles which even purports to limit or restrict such devolution.

81. In the circumstances, it must be concluded that Article VIII of the Covenant not only acknowledged and accepted the factum that the administration with respect to the Temple, its properties, as well as with respect to Pandaravaga properties, had already vested in "the Ruler of the Covenanting State of Travancore", but the said Article expressly continued the same status and stipulated that such administration shall be conducted subject to the supervision and control of "the Ruler of Travancore", the meaning of which expression has already been dealt with and deduced earlier.

C] Effect of the Constitution of India as it stood before the Constitution (Twenty Sixth Amendment) Act, 1971 and of the provisions of TC Act

82. We now consider the effect of the Constitution of India on the status and entitlement of the Ruler of Travancore to the Shebaitship of the Temple.

Article 291[53] of the Constitution of India dealt with Privy Purses payable to the Rulers and stipulated that if under any covenant or agreement

[53] The Article was repealed by the Constitution (Twenty Sixth Amendment) Act, 1971

entered into by the Ruler of any Indian State, any sums were guaranteed or assured by the Government of the Dominion of India to be paid as Privy Purse, the sums in that behalf would be charged on and paid out of the Consolidated Fund of India and that the sums so paid to any Ruler would be exempt from all taxes on income. Article 362[53] of the Constitution of India stipulated that in the exercise of the power of Parliament, or of the Legislature of a State, to make laws or in the exercise of their respective executive powers, due regard shall be had to the guarantee or the assurance given under any such covenant or agreement, as was referred to in Article 291 of the Constitution of India, with respect to personal rights, privileges and dignities of the Ruler of an Indian State.

Article 366(22)[54] defined the expression "Ruler" to mean, *inter alia*, one who had signed the Covenant referred to in Article 291 and who, for the time being, was recognized by the President of India to be the Ruler of that State and would include successor to such Ruler. It may be stated here that there is no dispute that the Ruler of Travancore who signed the Covenant was recognized by the President of India to be the Ruler of Travancore. Article 363,

54 As it stood before it was amended by the Constitution (Twenty Sixth Amendment) Act, 1971

which has remained unamended, speaks of "Bar to interference by Courts in disputes arising out of certain treaties, agreements etc."

83. Soon thereafter, the TC Act came into force. The relevant provisions of the TC Act have already been extracted earlier. Chapter III of the TC Act specifically dealt with Sree Padmanabhaswamy Temple and matters pertaining to the administration of the Temple. Said Chapter III of the TC Act is consistent with the latter part of Sub-Article 'b' of Article VIII of the Covenant and stipulates *inter alia* that the administration of the Temple, Sri Pandaravaga properties and all other properties and funds of the Temple "vested in trust in the Ruler of Travancore" and the sum of Rs.6 lakhs contributed in terms of Sub-Section 1 of Section 18 of the TC Act shall be conducted, "subject to the control and supervision of the Ruler of Travancore" by an Executive Officer appointed by him. Said Chapter III did not confer any right or benefit for the first time, where none existed earlier but gave statutory recognition to what was acknowledged and accepted in the latter part of Sub-Article 'b' of Article VIII of the Covenant to be the continuing status. Section 20 of the TC Act then deals with the constitution of Sree Padmanabhaswamy Temple Committee, which is also in tune with said Article VIII of the Covenant.

Two features must be noticed at this stage. Insofar as incorporated or unincorporated Devaswoms are concerned, consistent with the stipulations of Sub-Article 'c' of Article VIII of the Covenant, the control and administration in respect of such Devaswoms is vested in Travancore Devaswom Board as stated in Section 15 of the TC Act. There are certain machinery provisions which deal with the manner in which the affairs of the Devaswom Board would be conducted, with which we are not presently concerned. Secondly, Sub-Section 2 of Section 62 of the TC Act, in tune with proviso to Sub-Article 'd' of Article VIII of the Covenant provides that despite the vesting of administration in Cochin Devaswom Board, the regulation and control of rituals and ceremonies in the temples referred to therein would continue to be exercised by the Ruler of Cochin. Thus, all material and relevant facets emanating from various provisions of the Covenant pertaining to the administration of the Temple, Sri Pandaravaga properties and all other properties of the Temple, so also, the management and control of all other Devaswoms and religious endowments were dealt with by the TC Act in a manner which was completely consistent with the relevant provisions contained in the Covenant.

84. As stated in paragraph 16 hereinabove, orders passed by the President of India that Rulers of Indian States had ceased to be recognized as Rulers of respective Indian States were under challenge in ***Madhav Rao Scinda***[12]**,** in which case the issues regarding the impact of Articles 291, 362, 363 and 366(22) of the Constitution as well as the effect of legislative measures brought in pursuance of the provisions of Article 362 were considered by this Court.

With regard to the nature of Privileges enjoyed by the Rulers Hidayatullah, C.J., in his opinion stated:-

> **"23.** The Privileges of the Rulers included many items. A memorandum on these privileges was issued by the Ministry of States in 1949. It did not contain an exhaustive list but was drawn up to inform Provincial and Union Governments about them. It contained an itemised list of 34 Privileges. They included several exemptions from the operation of Indian Laws, the enjoyment of Jagir and personal property of the Rulers and members of their families, the payment by the States of the marriage expenses of the brothers and sisters of the Rulers, immunity from some processes of courts of law, immunity from requisitioning of the private properties of the Rulers and their families and so on and so forth. During the negotiations letters were written to the Rulers to assure them that the Privy Purse was fixed in perpetuity and the freedoms enjoyed by them would be continued."

As regards 'recognition of a Ruler' under Article 366(22) the learned Chief Justice observed:

> **"53.** …. The obligation to recognise a Ruler is bound up with the other guarantees contained in Articles 291 and 362. The definition in Article 366(22) is merely the key to find a particular Ruler……

… … …

72 …This Article renders the certainty of assumption of Rulership to depend upon recognition and that recognition is worked out primarily under Covenants and Agreements. The dominant and immediate purpose and application of the Article depends upon Covenants and Agreements. I have earlier said that the President in recognising a Ruler or withdrawing his recognition does not act arbitrarily but in the light of Covenants and Agreements. All such instruments mention law and custom of the family except the Bhopal Agreement where a local statute has to be observed. The selection of a Ruler's successor thus has to be worked out under a Covenant or Agreement. The Article, therefore, has for its dominant purpose the selection of Rulers through the application of the Covenants and Agreements."

The learned Chief Justice then concluded

"77. My conclusions on Articles 291, 362 and 366(22) are that Article 291 is not a provision relating to Covenants and Agreements but a special provision for the source of payment of Privy Purses by charging them on the Consolidated Fund and for making the payment free of taxes on income. It does not in its dominant purpose and theme answer the description in the latter part of Article 363. Article 362 is within the bar of Article 363 because its dominant purpose is to get recognised the Covenants and Agreements with Rulers. However, in so far as the same guarantees find place in legislative measures the provisions of Article 362 need not be invoked and the dispute decided on the basis of those statutes. Such a case may not attract Article 362 and consequently the bar of Article 363 may not also apply. Article 366(22) is within the description so long as the President in recognising a Ruler or a successor is effectuating the provisions of a Covenant or Agreement. It may apply when the discretion exercised is relatable to his powers flowing from the Covenants read with the article. However where the President acts wholly outside the provisions of Article 366(22) his action can be questioned because the bar applies to bona fide and legitimate action and not to ultra vires actions."

(emphasis added)

The majority judgment was authored by Shah, J. (as the learned Chief Justice then was). With regard to Articles 291 and 362, it was observed:-

> **"126.** Even after the integration of States, the obligations under the covenants were to be met out of the revenues of the respective States. The covenants and the various stages through which ultimate integration was achieved probably remained Acts of State. The rights and obligations accruing or arising under those acts of State could be enforced only if the Union of India had accepted those rights and obligations. After the Constitution the obligation to pay the privy purse rested upon the Union of India, not because it was inherited from the Dominion of India, but because of the constitutional mandate under Article 291. The source of the obligation was in Article 291, and not in the covenants and the agreements. Reference to the covenants and agreements in Article 291 was for defining the privy purse: the obligations of the Provinces in respect of the "Provincially merged States", and obligation of the Union of States in respect of the States merged in such Unions, ceased by recognition to retain their original character. The obligation which arose out of the merger agreement and was on that account an act of State shed its original character on acceptance by the Constitution. The entity obliged to pay the privy purse did not after the Constitution remain the same, the source out of which the obligation was to be satisfied was not the original source; the incident relating to exemption from payment of tax was vitally altered, and the amount also was in some cases different. Whereas the liability to pay the privy purse to the Rulers under the merger agreements was assured by the Dominion Government, the Constitution imposed upon the Union Government a directive to pay the privy purse.
>
> (Emphasis added)
>
> … … …
>
> **129.** The structure of Article 362 is somewhat different. That Article imposes restrictions upon the exercise of legislative and executive functions. Recognition of the personal rights and privileges of the Rulers arising out of the covenants is not explicit, but the injunction that in the exercise of legislative and executive power due regard shall be had to the guarantees, clearly implies acceptance and recognition of the personal rights, privileges and dignities. The Constitution thereby affirms the binding force of

> the guarantees and assurances under the covenants of personal rights, privileges and dignities, but unlike the guarantee of payment of the privy purse in Article 291, the guarantee under Article 362 is of the obligation under the original covenants and agreements executed by the Rulers, barring those regarding which there is express legislation enacted to give effect to certain personal rights and privileges e.g., Income Tax Acts, 1922 and 1961, Wealth Tax Act, 1957, Gift Tax Act, 1958, notifications under the Sea Customs Act, 1878, Code of Civil Procedure, 1908 and Code of Criminal Procedure, 1898. A Ruler seeking to enforce privileges which parliamentary statutes have recognised relies for right to relief upon the mandate of the statutes, and not of the covenant."
>
> (Emphasis added)

The majority Judgment went on to observe: -

> **"134.** In dealing with the dimensions of exclusion of the exercise of judicial power under Article 363, it is necessary to bear in mind certain broad considerations. The proper forum under our Constitution for determining a legal dispute is the Court which is by training and experience, assisted by properly qualified advocates, fitted to perform that task. A provision which purports to exclude the jurisdiction of the Courts in certain matters and to deprive the aggrieved party of the normal remedy will be strictly construed, for it is a principle not to be whittled down that an aggrieved party will not, unless the jurisdiction of the Courts is by clear enactment or necessary implication barred, be denied his right to seek recourse to the Courts for determination of his rights. The Court will interpret a statute as far as possible, agreeably to justice and reason and that in case of two or more interpretations, one which is more reasonable and just will be adopted, for there is always a presumption against the law maker intending injustice and unreason. The Court will avoid imputing to the Legislature an intention to enact a provision which flouts notions of justice and norms of fair play, unless a contrary intention is manifest from words plain and unambiguous. The provision in a statute will not be construed to defeat its manifest purpose and general values which animate its structure. In an avowedly democratic polity, statutory provisions ensuring the security of fundamental human rights including the right to property will be, unless the contrary mandate precise and unqualified, be construed liberally so as to uphold the right. These rules apply to the interpretation of constitutional and statutory provisions alike.

… … …

136. Jurisdiction to try a proceeding is barred under the first limb of Article 363 if the dispute arises out of the provision of a covenant: it is barred under the second limb of Article 363 if the Court holds that the dispute is with respect to a right arising out of a provision of the Constitution relating to a covenant. A dispute that an order of an executive body is unauthorised, or a legislative measure is ultra vires, is not one arising out of any covenant under the first limb of Article 363, merely because the order or the measure violates the rights of the citizen which, but for the act or measure, were not in question. The dispute in such a case relates to the validity of the act or the vires of the measure. Exclusion of the Court's jurisdiction by the terms of the relevant words lies in a narrow field. If the constitutional provision relating to a covenant is the source of the right claimed to accrue, or liability claimed to arise, then clearly under the second limb the jurisdiction of the Court to entertain a dispute arising with respect to the right or obligation is barred. We need in the present case express no opinion on the question whether a dispute that an executive act or legislative measure operating upon a right accruing or liability arising out of a provision is invalid falls within the second limb of Article 363. We do not therefore pronounce upon the argument of Mr Palkhivalla that the dispute whether the recognition of a Ruler is withdrawn without authority of law is not excluded from the jurisdiction of the Courts, because it is not a dispute with respect to a right accruing under a provision of the Constitution.

(emphasis added)

… … …

138. Article 366(22) is, in our judgment, a provision relating to recognition of Rulers: that is the direct and only purpose of the provision. It is not a provision relating to a covenant. The qualification of a person being recognized as a Ruler is undoubtedly that he is a Prince, Chief or other person who had entered into a covenant or agreement as is referred to in Article 291, or that he is the successor to such a Ruler. Reference to the covenant or the agreement of the nature mentioned in Article 291 is for determining who may be recognized as a Ruler. Because of that reference the provision enacted with the object of conferring authority upon the President to recognize a Ruler, will not be deemed one relating to the covenant or agreement.

… … …

143. The source of the right to receive the Privy Purse is for reasons already stated the constitutional mandate: it is not in the covenant. Reference to the covenant in Article 291 merely identifies the sum payable as Privy Purse: it does not make Article 291 a provision relating to the covenant. A dispute as to the right to receive the Privy Purse, is therefore, not a dispute arising out of the covenant within the first limb of Article 363, nor is it a dispute with regard to a right accruing or obligation arising out of a provision of the Constitution relating to a covenant."

(emphasis added)

K.S. Hegde, J. in his opinion stated:-

"209. Article 363 has two parts: the first part deals with disputes arising out of any provisions of a treaty, agreement or covenant, etc. and the second part with dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of the Constitution, relating to any such treaty, agreement, covenant, engagement, Sanad or other similar instrument.

210. Dealing with Articles 362 and 363 this is what the White Paper says in para 240 (at p. 125):

> *"Guarantees regarding rights and privileges.*— Guarantees have been given to the Rulers under the various agreements and covenants for the continuation of their rights, dignities and privileges. The rights enjoyed by the Rulers vary from State to State and are exercisable both within and without the states. They cover a variety of matters ranging from the use of the red plates on cars to immunity from Civil and Criminal jurisdiction and exemptions from customs duties, etc. Even in the past it was neither considered desirable nor practicable to draw up an exhaustive list of all these rights. During the negotiations following the introduction of the scheme embodied in the Government of India Act, 1935, the Crown Department had taken the position that no

> more could be done in respect of the rights and privileges enjoyed by the Rulers than a general assurance of the intention of the Government of India to continue them. Obviously, it would have been a source of perpetual regret if all these matters had been made as justiciable. Article 363 has, therefore been embodied in the Constitution which excludes specifically the Agreements of Merger and the covenants from the jurisdiction of Courts except in cases which may be referred to the Supreme Court by the President. At the same time, the Government of India considered it necessary that constitutional recognition should be given to the guarantees and assurances which the Government of India have given in respect of the rights and privileges of Rulers. This is contained in Article 362, which provides that in the exercise of their legislative and executive authority, the legislative and executive organs of the Union and States will have due regard to the guarantees given to the Rulers with respect to their personal rights, privileges and dignities."
>
> … … …

212. As seen earlier Article 363 has two parts. The first part relates to disputes arising out of Agreements and Covenants etc. The jurisdiction of this Court as well as of other Courts is clearly barred in respect of disputes falling within that part. Then comes the second part of Article 363, which refers to disputes in respect of any right accruing under or any liability or obligation arising out of any of the provisions of the Constitution relating to any agreement, covenant etc. We are concerned with this part of Article 363. Before a dispute can be held to come within the scope of that part, that dispute must be in respect of a right accruing under or the liability or obligation arising out of a provision of the Constitution and that provision of the Constitution must relate to agreements, covenants etc.

213. The principal dispute with which we are concerned in these cases is whether the President has the power to abolish all Rulers under Article 366 (22). Quite plainly this dispute cannot be held to be dispute in respect of a right accruing or a liability or obligation arising under any provision of the Constitution. Herein we are not concerned with any right, liability or obligation. We

> are concerned with powers of the President under Article 366(22). What is in dispute is the true scope of the power of the President under Article 366(22). That dispute does not fall within Article 363. Power is not the same thing as right. Power is an authority whereas a right in the context in which it is used in Article 363, signifies property. The fact that the Court's decision about the scope of the power of the President under Article 366(22) may incidentally bear on certain rights does not make the dispute, a dispute relating to any right accruing under any provision of the Constitution. A dispute as regards the interpretation of a provision of the Constitution is not a dispute within the contemplation of the second part of Article 363 as it is not a dispute in respect of any right, liability or obligation. The contention of the petitioners is that the impugned orders are ultra vires the powers of the President, hence null and void. Such a dispute does not come within Article 363."

85. Hidayatulla, C.J., found Article 291 to be a special provision for the source of payment of Privy Purses and the same thought was expressed in paragraph 126 by the majority Judgment which also found the structure of Article 362 to be different. Unlike Article 291, which itself was the source for payment of Privy Purses, Article 362 stipulated that due regard shall be had to the guarantees or assurances given under any covenant or agreement while exercising legislative or executive power. Thus, the source for enjoyment of personal rights, privileges and dignities referred to in Article 362 would be in the statutory provisions enacted in terms of the obligation spelt out in Article 362. To the extent any legislative measure was undertaken, or executive power

was exercised, with due regard to the guarantees or assurances given under any covenant or agreement, the source would be in such measure or exercise.

86. Insofar as the present segment is concerned, it must, therefore, be concluded that the relevant provisions of the Constitution of India as well as that of the TC Act did not, in any way, upset or abridge the status enjoyed by the Ruler of Travancore as Shebait of the Temple and also did not, in any manner, adversely impact the right of administration vested in the Ruler of Travancore. As a matter of fact, the relevant provisions of the TC Act afforded statutory flavour to the status contemplated by Article VIII of the Covenant.

The submission that by virtue of Article 363 of the Constitution, the present dispute could not be entertained shall be considered later.

D] <u>Effect of the Constitution (Twenty Sixth Amendment) Act, 1971</u>

87. The Statement of Objects and Reasons as well as the nature of this Constitutional Amendment; the newly incorporated Article 363A and the amended definition of Ruler in Article 366(22) have been set out in paragraph 17 hereinabove. As the Statement of Objects and Reasons indicated, the concept of rulership with Privy Purses and special privileges was found to be incompatible with egalitarian social order and as such it was decided to

terminate the Privy Purses and privileges of the Rulers so also it was decided to terminate expressly the recognition already granted to such Rulers and to abolish Privy Purses and extinguish all rights and obligations in respect of Privy Purses. This Constitutional Amendment deleted Articles 291 and 362; and inserted Article 363A which now expressly stipulates *inter alia* that any person who was recognized to be the Ruler of an Indian State or his Successor, shall, cease to be recognized, as such Ruler or Successor, and all rights, liabilities and obligations in respect of Privy Purses stand extinguished. Article 366(22) was also accordingly amended and in terms of the amended definition, "Ruler" now means, *inter alia*, the person who was recognized as the Ruler of an Indian State or as a successor to such Ruler, before the commencement of said Constitutional Amendment. With the deletion of Article 291, the rights, liabilities and obligations with respect to Privy Purses stood extinguished. The guiding principles emanating from Article 362 that in exercise of legislative or executive power, due regard shall be had to the guarantee or assurance given in any Covenant or agreement referred to in Article 291 also ceased to exist.

88. Before we consider the impact of said Constitutional Amendment, we must note how the challenge raised by the co-Ruler of Indian State of Kurundwad Jr. and successor to the late Ruler of Indian State of Mysore to said

Constitutional Amendment was dealt with by the Constitution Bench of this Court in ***Raghunathrao Ganpatrao[14].*** At the outset, in para 36 of the leading judgment it was observed:

> **"36.** We are not concerned about the particulars of the agreements executed by other Rulers of various States."

Pandian, J. who authored the leading Judgment, referred to antecedent facts starting from the Constitution (24th Amendment) Bill, 1970 as well as the challenge raised in ***Madhav Rao Jivaji Rao Scindia[12]*** as follows:-

> **"38.** On May 14, 1970, the Constitution (Twenty-fourth Amendment) Bill, 1970 for abolition of the above said privy purse, privileges etc. conferred under Articles 291, 362 and 366(22) was introduced in the Lok Sabha by the then Finance Minister, Shri Y.B. Chavan. The Bill contained three clauses and a short Statement of Objects and Reasons. The statement reads thus:
>
> > "The concept of rulership, with Privy Purses and Special Privileges unrelated to any current functions and social purposes, is incompatible with an egalitarian social order. Government have, therefore, decided to terminate the Privy Purses and Privileges of the Rulers of former Indian States. Hence this Bill."
>
> **39.** On September 2, 1970 the Bill was voted upon in the Lok Sabha. But on September 5, 1970 the Rajya Sabha rejected the same since the Bill failed in the Rajya Sabha to reach the requisite majority of not less than two-third members present as required by Article 368 and voting. Close on the heels of the said rejection, the President of India purporting to exercise his powers under clause (22) of Article 366 of the Constitution, signed an Order withdrawing recognition of all the Rulers in the country en masse. A communication to this effect was sent to all the Rulers in India who had been previously recognised as Rulers.

> **40.** This Presidential Order de-recognising the Rulers was questioned in *Madhav Rao Scindia* v. *Union of India*[12] by filing writ petitions under Article 32 of the Constitution challenging it as unconstitutional, ultra vires and void. An eleven-Judge Bench of this Court by its judgment dated December 15, 1970 struck down the Presidential Order being illegal, ultra vires and inoperative on the ground that it had been made in violation of the powers of the President of India under Article 366(22) of the Constitution and declared that the writ petitioners would be entitled to all their pre-existing rights and privileges including right to privy purses as if the impugned orders therein had not been passed. Here, it may be noted that Mitter and Ray, JJ. gave their dissenting judgment."

While dealing with the decision in ***Madhav Rao Jivaji Rao Scindia***[12] it was observed:-

> **"60.** So far as Article 362 is concerned, it has been held by majority of the Judges that the said article is plainly a provision relating to covenants within the meaning of Article 363 and a claim to enforce the rights, privileges and dignities under the covenants therefore, are barred by the first limb of Article 363 and a claim to enforce the recognition of rights and privileges under Article 362 are barred under the second limb of Article 363 and that the jurisdiction of the courts however, is not excluded where the relief claimed is founded on a statutory provision enacted to give effect to personal rights under Article 362."
>
> (Emphasis added)

The leading Judgment thereafter observed: -

> **"74.** 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.
>
> (Emphasis added)
>
> **75.** Therefore, there cannot be any justification in saying that the guarantees and assurances given to the Rulers were sacrosanct and that Articles 291 and 362 reflected only the terms of the agreements and covenants. In fact as soon as the Constitution came into force, the Memoranda of Agreements executed and ratified by the States and Union of States were embodied in formal agreements under the relevant articles of the Constitution and no obligation flowed from those Agreements and Covenants but only from the Constitutional provisions. To say differently, after the introduction of Articles 291 and 362 in the Constitution, the Agreements and Covenants have no existence at all. The reference to Covenants and Agreements was casual and subsidiary and the source of obligation flowed only from the Constitution. Therefore, the contention urged on the use of the words 'guaranteed' or 'assured' is without any force and absolutely untenable.
>
> (Emphasis added)
>
> … … …
>
> **91.** After the commencement of the Constitution, in pursuance of Article 366(22), the Rulers were recognised and they had been enjoying the privy purses, privileges, dignities etc. on the basis of the relevant constitutional provisions. Pursuant to the resolution passed by the All India Congress Committee in 1967, the Union of India introduced the Twenty-fourth Amendment Bill in 1970 to implement the decision of the All India Congress Committee

favouring removal of privy purses, privileges etc. But the Bill though passed in the Lok Sabha failed to secure the requisite majority in the Rajya Sabha and thereby it lapsed. It was only thereafter, the President of India issued an Order in exercise of the powers vested in him under Article 366(22) de-recognising the Rulers and stopping the privy purses, privileges etc. enjoyed by the Rulers. This Order passed by the President was the subject-matter of challenge in *Madhav Rao*[12]. The Supreme Court struck down the Order of the President as invalid as in the view of the Court de-recognition of the Rulers would not take away right to privy purses when Articles 291 and 362 were in the Constitution. It was only in that context, the observations which have been relied upon by Mr Soli J. Sorabjee, were made. The Twenty-sixth Amendment itself was passed by Parliament to overcome the effect of this judgment. Now by this Amendment, Articles 291 and 362 are omitted, Article 363-A is inserted and clause (22) of Article 366 is amended. Therefore, one cannot be allowed to say that the abovesaid omitted articles and unamended clause were the essential part of the constitutional scheme. So they have to be read only in the context of a challenge made to the Presidential Order which sought to render nugatory certain rights guaranteed in the Constitution which were then existing. In any event, the constitutional bar of Article 363 denudes the jurisdiction of any Court in disputes arising from covenants and treaties executed by the Rulers. The statement of Objects and Reasons of Twenty-sixth Amendment clearly points out that the retention of the above articles and continuation of the privileges and privy purses would be incompatible with the egalitarian society assured in the Constitution and, therefore, in order to remove the concept of rulership and terminate the recognition granted to Rulers and abolish the privy purses, this Amendment was brought on being felt necessary.

(Emphasis added)

… … …

96. Permanent retention of the privy purse and the privileges of rights would be incompatible with the sovereign and republican form of Government. Such a retention will also be incompatible with the egalitarian form of our Constitution. That is the opinion of the Parliament which acted to repeal the aforesaid provisions in exercise of its constituent power. The repudiation of the right to privy purse privileges, dignities etc. by the deletion of Articles 291 and 362, insertion of Article 363-A and amendment of clause (22) of Article 366 by which the recognition of the Rulers and

> payment of privy purse are withdrawn cannot be said to have offended Article 14 or 19(*g*) [*sic* 19(1)(*f*)] and we do not find any logic in such a submission. No principle of justice, either economic, political or social is violated by the Twenty-sixth Amendment. Political justice relates to the principle of rights of the people, i.e. right to universal suffrage, right to democratic form of Government and right to participation in political affairs. Economic justice is enshrined in Article 39 of the Constitution. Social justice is enshrined in Article 38. Both are in the directive principles of the Constitution. None of these rights are abridged or modified by this Amendment. We feel that this contention need not detain us anymore and, therefore, we shall pass on to the next point in debate."

Mohan, J. in his separate opinion, concurred with the majority decision and observed:-

> **"151.** The guarantees in Articles 291 and 362 are guarantees for the payment of privy purses. Such a guarantee can always be revoked in public interest; more so, for fulfilling a policy objective or the directive principles of the Constitution. This is precisely what the preamble to the impugned Amendment says. That being so, the theory of sanctity of contract or the unamendability of Article 291 or 362 does not have any foundation. The theory of political justice is also not tenable since political justice means the principle of political equality such as adult suffrage, democratic form of Government, etc.
>
> **152.** The treaties/covenants/etc. entered into between the Union of India and the Rulers were as a result of political action. No justiciable rights were intended to be created. Article 363 as it stood in its original form spells out this proposition. The rights and privileges in the articles prior to the Twenty-sixth Amendment were as acts of State of the Government and not in recognition of the sacrifices of the Rulers. By no means, can it be contended that these guarantees given to the Rulers were ever intended to be continued indefinitely."

This Court, thus, rejected all the challenges and held the Constitution (Twenty Sixth Amendment) Act, 1971 to be valid.

89. Consequent to the de-recognition of Rulers of Indian States and abolition of Privy Purses by the Constitution (Twenty Sixth Amendment) Act, 1971, the Parliament enacted 1972 Act. The relevant provisions of 1972 Act are set out in paragraph 19 hereinabove. It sought to amend certain enactments which had granted privileges to former Rulers. One such example pertaining to the provisions of the Wealth Tax Act is set out in detail in said paragraph 19. The Statement of Objects and Reasons for 1972 Act discloses that indefinite continuance of the privileges was found indefensible, but the withdrawal or cessation would not be immediate "to enable the former Rulers to adjust progressively."

Thus, unlike Privy Purses, the termination of which was intended to be immediate and therefore the source for Privy Purses, namely, Article 291 itself was deleted, the deletion of Article 362 by itself would not result in cessation of every privilege or personal right with respect to which "due regard" was had while exercising legislative power in terms of Article 362 before its deletion. The source being in the statutory enactments, despite deletion of Article 362, if

the concerned legislations continue to remain in operation, the personal rights or privileges could still be enjoyed. That is precisely why, on the strength of various statutory provisions certain benefits in the form of personal rights or privileges are still available. It is for the concerned legislatures to take appropriate steps in accordance with law, either to terminate the effect and operation of extension of such benefits or allow them to operate or lessen the extent and cause gradual changes as was sought to be undertaken by 1972 Act.

90. Thus, if the provisions of the TC Act to the extent it enacted Chapter III of Part I dealing with "Sree Padmanabhaswamy Temple" and related provisions are taken to be an exercise by the concerned Legislature with "due regard" to the assurances and guarantees in covenant or agreements in terms of Article 362 as it existed then even with deletion of Article 362 the concerned provisions would still be operative so long as appropriate steps are not taken by the concerned Legislature.

91. As is evident from the White Paper referred to hereinabove, the assurances and guarantees given in the covenants or agreements entered into with various Rulers normally had four elements; i) that certain sums shall be payable to the Rulers by way of Privy Purses; ii) that certain properties

mentioned as private properties of the Ruler would vest in the Ruler in his personal capacity; iii) that succession to the Gaddi would go strictly by the prevalent law and custom; and iv) that personal rights, privileges and dignities enjoyed by the Rulers and in some cases by the members of the family of the Ruler, would continue to be available.

92. Out of the aforesaid four elements, the elements (i) and (iv) were covered by Articles 291 and 362 as they stood before being deleted. The effect of such deletion has been discussed and dealt with. The elements (ii) and (iii) are normal incidents which were not within the scope of said Articles 291 and 362. Despite the Constitution (Twenty Sixth Amendment) Act, 1971, the private properties of the Ruler would continue to be available for normal succession and devolution in accordance with the law and custom. Though concepts such as Ruler or Rulership have ceased to operate, succession to the Gaddi as an incident may still operate. For instance, there could be a sword or any other ceremonial weapon, or a *sarpech*, or heirloom jewellery, which must go by rule of primogeniture, as against the normal way of succession with regard to other personal properties. All such incidents have not been terminated. The clear example is in clause (iv) of sub-section (1) of Section 5 of the Wealth Tax Act, 1957 which uses the expression "jewellery in the

possession of any Ruler, not being his personal property" which had been recognized as his "heirloom". Such items or properties which fall in or are connected strictly with element (iii), may descend along with succession to the Gaddi and by very nature must remain impartible. On the other hand, if normal principles of succession are applied, at any given level of succession, such items or properties recognized as "heirloom" may be required to be shared amongst more than one person and would therefore cease to be impartible.

93. These four elements were covered by Articles XIV, XV, XVII and XVI respectively in the Covenant in the present case. However, apart from the said four assurances, the Covenant also dealt with an additional and important aspect in Article VIII(b). It accepted and acknowledged that the administration with respect to the Temple, Sri Pandaravaga properties, and the property of the Temple which was also vested in the Ruler of the Covenanting State would continue to be conducted in the manner stipulated therein, subject to the control and supervision of the Ruler of Travancore. The effect of such Article and the fact that such vesting was not in the capacity as Ruler has already been dealt with. It has also been concluded that the expression "The Ruler of Travancore" was only to locate and describe the person who would be in control and supervision of the administration.

94. In the premises, we must conclude that the Constitution (Twenty Sixth Amendment) Act, 1971 did not in any way impact or affect the administration of the Temple, Sri Pandaravaga properties and the properties of the Temple, which continued to be under the control and supervision of the Ruler of Travancore.

E] Effect of the death of the person who had signed the Covenant as the Ruler of the Covenanting State of Travancore

95. As stated in paragraph 21 hereinabove, Sree Chithira Thirunal Balarama Varma who had signed the Covenant as the Ruler of the Covenanting State of Travancore, passed away on 19.07.1991.

96. It was submitted on behalf of the State that the said Ruler of the Covenanting State of Travancore was duly recognized by the President of India in terms of Article 366(22) of the Constitution as it stood before the Constitution (Twenty Sixth Amendment) Act, 1971, and that even after the said Amendment, by virtue of amended definition of Ruler under Article 366(22) he continued to fulfil the criteria, and could answer the definition of "Ruler". It was further submitted that he was thus, the recognized Ruler of Travancore and in that capacity he could, during his lifetime have the benefit of Chapter III of

Part I of the TC Act; that after his death, no person or a successor could be recognized as Ruler of Travancore in terms of Article 366(22), as amended; and as such, no person can come within the meaning of expression "Ruler of Travancore" as used in said Chapter III of Part I, and consequently, no person or successor could avail of the benefit of various provisions in Chapter III of Part I of the TC Act.

On the other hand, the submission on behalf of the appellants as well as the Intervenors supporting them is that for the purposes of said Chapter III of Part I, the definition in Article 366(22) would not be the governing definition. The matter has to be assessed going by the context in which the expression had been used in the Covenant and the TC Act.

97. The discussion in the first and second segments hereinbefore have led us to conclude that as on the day when the Covenant became effective, the Ruler of the Covenanting State of Travancore, was holding the office of Shebait of the Temple, which was not in his official capacity as the Ruler; and that the effect of Sub Article (b) of Article VIII was not to invest any new authority and power in him for the first time because of his official status, but an acknowledgement of the existing authority and power already vested in him. It

has also been concluded by us that the expression "Ruler of Travancore" in the Covenant and in the TC Act was only to identify the person, and that the official status of the Ruler of Travancore had no relation with such administration.

The principles emanating from various decisions which were considered in the first segment have been culled out by us in para 72 hereinabove. If according to the settled principles, the Shebaitship is like any other heritable property which would devolve in accordance with custom or usage, and that the rule of custom must prevail in all cases, even after the death of the erstwhile Ruler of Travancore in 1991, the Shebaitship of the Temple being unconnected with the official status of the person who signed the Covenant, must devolve by the applicable laws of succession and custom.

The proclamation issued on 10.08.1947 as referred to in paragraph 8 hereinabove clearly states the applicable principles of succession. The decision of this Court in ***Revathiannal***[13] is also to similar effect. Thus, going by concerned principles of succession and custom, the successor can easily be located.

98. It may be relevant to note here that the TC Act has not defined the expression "Ruler", and the definition of Ruler under Article 366 (22) of the

Constitution is for the purposes of the Constitution whereas the expression "Ruler" as defined under Article 363 of the Constitution in inclusive manner is for the purposes of said Article alone. In ***Maharaja Pravir Chandra Bhanj Deo Kakatiya vs. The State of Madhya Pradesh***[55] the Constitution Bench of this Court had stated:-

> "… There is nothing in the provisions of Art. 366(22) which requires a court to recognize such a person as a Ruler for purposes outside the Constitution. …"

Similarly, in ***Rani Ratna Prova Devi vs. State of Orissa and another***[56], another Constitution Bench of this Court had observed:-

> "…But it must be remembered that the definitions prescribed by Art. 366 are intended for the purpose of interpreting the articles in the Constitution itself, unless the context otherwise requires, and so, the argument that the definition of the word "Ruler" prescribed by the Act is inconsistent with the definition prescribed by Art. 366 (22), has really no substance or meaning. …"

99. The definitions of 'Ruler' in Articles 363 and 366(22) thus do not *ipso facto* have any application to the provisions of the TC Act, unless the TC Act expressly stipulates so or impliedly refers to such definitions either under Article 363 or under Article 366(22). With the deletion of Articles 291 and

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55 (1961) 2 SCR 501
56 (1964) 6 SCR 301

362, the scope of definition in Article 366(22) to find a particular Ruler for conferral of advantages referred to in both the Articles, has ceased to have any significance. However, the concept of the Ruler and Rulership, as discussed hereinabove are still relevant insofar as certain legislations and provisions are concerned. Many of these legislations, normally define the expression themselves, or by reference incorporate the definition as given in Article 363; for example, Section 87B of the Code of Civil Procedure, 1908. No such provision was made in the TC Act. The question therefore, is whether the expression "Ruler of Travancore" as appearing in Chapter III of Part I of the TC Act is capable of being understood to include his successors according to custom.

100. A perusal at Sections 15, 62 and Chapter III of Part I of the TC Act clearly shows that these provisions were put on the Statute Book having "due regard" to the Covenant. Since the source of these provisions lies in the Covenant, and there being no definition of "Ruler of Travancore", or for that matter "Ruler of Cochin", one has to consider the relevant Articles of the Covenant to assess or understand the significance of the said provisions of the TC Act. Sections 15, 62 and Chapter III of Part I of the TC Act were enacted

principally to give effect to Article VIII and generally to give effect to the Covenant.

101. In the earlier segments, we have already concluded that Article VIII had clearly used the expression "now vested in trust in the Ruler" while speaking about the administration of the Temple, Sri Pandaravaga properties, and the properties of the Temple. The Covenant thus, not only acknowledged such status, but in sub-Article 'b' of Article VIII, intended to continue the status where such person would continue to exercise control and supervision over the administration of the Temple. This was in the backdrop of the long standing association of the ruling family with the Temple, and the Shebaitship held by the continuous line of Rulers. The expression "Ruler of Travancore" used in the provisions of the TC Act must therefore be understood in the same light. As held earlier, the Covenant never intended to restrict, or do away, with the right of administration already vested in the "Ruler of Travancore", and such expression was not intended to be confined to the present incumbent, or the person who had signed as the Ruler of the Covenanting State of Travancore. Going by the normal incidents of Shebaitship including the heritability, the context in which the expression was used in Article VIII of the Covenant, and

carried in the provisions of the TC Act, it must be held that such expression must include the successors to the person who had signed the Covenant.

102. Apart from the Covenant, the expression "Ruler of Travancore" as used in Chapter III of Part I of the TC Act did not depend upon any other enactment or instrument to look for the successor to the Ruler of Travancore, nor is there any express or implied intendment to go by the definition of "Ruler" either under Article 363 or 366(22) of the Constitution. The Covenant speaks of succession, according to law and custom, and that is how the successor must be identified. As Hidayatullah, C.J., opined in paragraphs 53 and 72[57] of his Judgment in ***Madhav Rao Jivaji Rao Scindia***[12] the definition in Article 366(22) as it then stood was merely a key to find a particular Ruler, and that the selection of a successor to the Ruler was required to be worked out under the Covenant. The method of selecting the successor under Article 366(22) as it then stood was not by way of any different formula or principle but was rooted in the concerned law and custom. That being the underlying principle as available from the Covenant, there would not be any difficulty in identifying the successor as and when the occasion arises.

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[57] Quoted in paragraph 84 hereinabove

103. At the same time, if the submission that the expression "Ruler of Travancore" in the TC Act must be made dependent on the recognition, is accepted, it would lead to incalculable inconvenience and prejudice. First, it was never the intention of the Legislature to make such an expression dependent upon any recognition. Secondly, there is no power in the President of India, after the Constitution (Twenty Sixth Amendment) Act, 1971 to grant any such recognition. Thirdly, the consequence of such an interpretation would mean that the unbroken line of succession to the Shebaitship would stand terminated making the entire Chapter III of Part I of the TC Act meaningless and redundant. Consequently, the administration of the Temple, Sri Pandaravaga properties and the properties of the Temple would suffer immense prejudice. Section 15 of the Act which vested the rights, authority and jurisdiction in respect of Devaswoms and Hindu Religious Endowments in the Travancore Board is also inapplicable to Chapter III of Part I. This would result in a complete void. The Legislature could not be ascribed of such an intention. On the other hand, the Legislature must be taken to be well aware that the Shebaitship was heritable, and remained in the royal family for few centuries in an unbroken line of succession. It is for this reason, consistent with the terms

of the Covenant, a special dispensation was made in Chapter III of Part I of the TC Act.

104. It may be relevant to note that the State in two affidavits filed in the Suits as referred to hereinabove, has taken a clear stand that the Temple is managed by the Travancore Palace. These affidavits were filed by responsible officers of the State, well after the death of the then Ruler in 1991. The understanding on part of the State machinery, or the officials by itself can never be the determining criteria, but that is a relevant factor to be taken note of, as observed by this Court in ***National and Grindlays Bank Ltd. vs. Municipal Corporation of Greater, Bombay***[58] and in ***Desh Bandhu Gupta and Co. and others vs. Delhi Stock Exchange Association Ltd.***[59]

105. In the instant case, since the Shebaitship had vested in the Ruler of Travancore, not in his official capacity, the normal incident of heritability must get attached to the office of such Shebaitship in accordance with governing principles of succession and custom. Therefore, when it comes to the matter concerning the administration of the Temple, Sri Pandavaraga properties and the properties of the Temple, the expression "the Ruler of Travancore" as

[58] (1969) 1 SCC 541 para 5
[59] (1979) 4 SCC 565 para 9

appearing in Chapter III of Part I of TC Act must mean the successor in accordance with the prevalent law and custom. In the process one need not go to the definition of Ruler either under Article 366(22) or under Article 363 of the Constitution of India. Consistent with the principles that have been culled out in para 72 hereinabove, after the death of the person who was in control and supervision of the administration, the heritable interest must devolve in accordance with the customary rights.

106. Further, unless and until the line of succession of the Shebaitship and in-charge of the administration, is completely extinct, there can be no question of escheat as observed by the High Court. In ***Kutchi Lal Rameshwar Ashram Trust Evam Anna Kshetra Trust*** v. ***Collector, Haridwar***[60], this Court had an occasion to consider the issue of escheat in the context of a Public Trust. In that case, after the death of one Mohanlal in whose name patta of the property was secured, the Collector had concluded that the property vested in the State Government by operation of law. Setting aside the decision of the High Court which had affirmed the conclusions of the Collector, this Court observed:-

> **"20.** Section 29 of the Hindu Succession Act, 1956 has been invoked by the Collector. Section 29 provides as follows:

[60] (2017) 16 SCC 418

> "**29.** ***Failure of heirs***.—If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the Government; and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject."

Section 29 embodies the principle of escheat. The doctrine of escheat postulates that where an individual dies intestate and does not leave behind an heir who is qualified to succeed to the property, the property devolves on the Government. Though the property devolves on the Government in such an eventuality, yet the Government takes it subject to all its obligations and liabilities. The State in other words does not take the property (at SCC p. 113, para 12) "as a rival or preferential heir of the deceased but as the lord paramount of the whole soil of the country", as held in *State of Punjab* v. *Balwant Singh*[61]. This principle from *Halsbury's Laws of England*[62] was adopted by this Court while explaining the ambit of Section 29. Section 29 comes into operation only on there being a failure of heirs. Failure means a total absence of any heir to the person dying intestate. When a question of escheat arises, the onus rests heavily on the person who asserts the absence of an heir qualified to succeed to the estate of the individual who has died intestate to establish the case. The law does not readily accept such a consequence. In *State of Bihar* v. *Radha Krishna Singh*[63], a Bench of three Judges of this Court formulated the principle in the following observations:

> "*272*. It is well settled that when a claim of escheat is put forward by the Government the onus lies heavily on the appellant to prove the absence of any heir of the respondent anywhere in the world. Normally, the court frowns on the estate being taken by escheat unless the essential conditions for escheat are fully and completely satisfied. Further, before the plea of escheat can be entertained, there must be a public notice given by the Government so that if there is any claimant anywhere in the country or for that matter in the world, he may come forward to contest the claim of the State. In the instant case, the States of Bihar and Uttar Pradesh merely satisfied themselves by appearing to oppose

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61 1992 Supp (3) SCC 108
62 4th Edn., Vol.17, Para 1439
63 (1983) 3 SCC 118

the claims of the respondent-plaintiffs. Even if they succeed in showing that the plaintiffs were not the nearest reversioners of the late Maharaja, it does not follow as a logical corollary that the failure of the plaintiffs' claim would lead to the irresistible inference that there is no other heir who could at any time come forward to claim the properties."

… … …

22. In ***Rambir Das*** *v.* ***Kalyan Das***[64] a Bench of two learned Judges of this Court dealt with a case of shebaitship. Citing the authority of Justice B.K. Mukherjea's celebrated *Tagore Law Lectures* with approval, this Court took note of the position of law elucidated in the lectures: (***Rambir Das case***[64], SCC p. 105, para 3)

> "3. … 'As shebaitship is property, it devolves like any other property according to the ordinary Hindu law of inheritance. If it remains in the founder, it follows the line of founder's heirs; if it is disposed of absolutely in favour of a grantee, it devolves upon the heirs of the latter in the ordinary way and if for any reason the line appointed by the donor fails altogether, Shebaitship reverts to the family of the founder.'"

On the question of escheat, B.K. Mukherjea, J. observes thus: (SCC p. 106, para 3)

> "3. … 'As there is always an ultimate reversion to the founder or his heirs, in case the line of shebaits is extinct, strictly speaking no question of escheat arises so far as the devolution of shebaitship is concerned. But cases may be imagined where the founder also has left no heirs, and in such cases the founder's properties may escheat to the State together with the endowed property. In circumstances like these, the rights of the State would possibly be the same as those of the founder himself, and it would be for it to appoint a shebait for the debutter property. It cannot be said that the State receiving a dedicated property

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64 (1997) 4 SCC 102

> by escheat can put an end to the trust and treat it as secular property.'"

In other words, even in a situation where a founder or his line of heirs is extinct, and the properties escheat to the State, the State which receives a dedicated property is subject to the trust and cannot treat it in the manner of a secular property. In fact, we may note, Section 29 expressly stipulates that the State "*shall take the property subject to all the obligations and liabilities to which an heir would have been subject*".

23. In deciding this case, this Court must also bear in mind the settled principle that unless the founder of a math or religious institution has laid down the principle governing succession to the endowment, succession is regulated by the custom or usage of the institution. This principle was enunciated over six decades ago by this Court in ***Sital Das*** *v.* ***Sant Ram***[43], rendered by B.K. Mukherjea, J., speaking for a Bench of four Judges: (AIR p. 609, para 9)

> "*9.* In the appeal before us the contentions raised by the parties primarily centre round the point as to whether after the death of Kishore Das, the plaintiff or Defendant 3 acquired the rights of Mahant in regard to the Thakardwara in dispute. The law is well settled that succession to Mahantship of a Math or religious institution is regulated by custom or usage of the particular institution, except where a rule of succession is laid down by the founder himself who created the endowment. As the Judicial Committee laid down [Vide ***Genda Puri*** v. ***Chatar Puri***[44], IA at p. 105] in one of the many cases on this point: (SCC OnLine PC)
>
> > '… In determining who is entitled to succeed as Mohunt, the only law to be observed is to be found in the custom and practice, which must be proved by testimony, and the claimant must show that he is entitled according to the custom to recover the office and the land and property belonging to it.'

> Mere infirmity of the title of the defendant, who is in possession, will not help the plaintiff."
>
> … … …
>
> **25.** The principle that the law does not readily accept a claim to escheat and that the onus rests heavily on the person who asserts that an individual has died intestate, leaving no legal heir, qualified to succeed to the property, is founded on a sound rationale. Escheat is a doctrine which recognises the State as a paramount sovereign in whom property would vest only upon a clear and established case of a failure of heirs. This principle is based on the norm that in a society governed by the Rule of Law, the court will not presume that private titles are overridden in favour of the State, in the absence of a clear case being made out on the basis of a governing statutory provision. To allow administrative authorities of the State—including the Collector, as in the present case—to adjudicate upon matters of title involving civil disputes would be destructive of the Rule of Law. The Collector is an officer of the State. He can exercise only such powers as the law specifically confers upon him to enter upon private disputes. In contrast, a civil court has the jurisdiction to adjudicate upon all matters involving civil disputes except where the jurisdiction of the court is taken away, either expressly or by necessary implication, by statute. In holding that the Collector acted without jurisdiction in the present case, it is not necessary for the Court to go as far as to validate the title which is claimed by the petitioner to the property. The Court is not called upon to decide whether the possession claimed by the Trust of over forty-five years is backed by a credible title. The essential point is that such an adjudicatory function could not have been arrogated to himself by the Collector. Adjudication on titles must follow recourse to the ordinary civil jurisdiction of a court of competent jurisdiction under Section 9 of the Code of Civil Procedure, 1908."

107. In the circumstances, we hold that the death of Sree Chithira Thirunal Balarama Varma who had signed the Covenant, would not in any way affect the Shebaitship of the Temple held by the royal family of Travancore; that after

such death, the Shebaitship must devolve in accordance with the applicable law and custom upon his successor; that the expression "Ruler of Travancore" as appearing in Chapter III of Part I of the TC Act must include his natural successors according to law and custom; and that the Shebaitship did not lapse in favour of the State by principle of escheat.

108. We must now deal with two decisions on which reliance was placed by Mr. Suresh, learned counsel for respondent Nos.3, 4 and 6 in appeal arising from Special Leave Petition (Civil) No.12361 of 2011.

A) In ***Bala Shankar Maha Shanker Bhattjee and Others vs. Charity Commissioner, Gujarat State***[23] the basic issue was whether Kalika Mataji Temple was a public Trust. The High Court found, *inter alia*, that by Sanad No.19, Scindias in their capacity as sovereign Rulers had passed on their obligations in respect of the temple to the British Government by a treaty concluded between them in 1860. After considering various decisions on the point, the principles were noted by this Court as under: -

> **"19.** A place in order to be a temple, must be a place for public religious worship used as such place and must be either dedicated to the community at large or any section thereof as a place of public religious worship. The distinction between a private temple and public temple is now well settled. In the case of former the beneficiaries are specific individuals; in the latter they are indeterminate or fluctuating general public or a class thereof.

Burden of proof would mean that a party has to prove an allegation before he is entitled to a judgment in his favour. The one or the other of the contending parties has to introduce evidence on a contested issue. The question of onus is material only where the party on which it is placed would eventually lose if he failed to discharge the same. Where, however, parties joined the issue, led evidence, such evidence can be weighed in order to determine the issue. The question of burden becomes academic.

20. An idol is a juristic person capable of holding property. The property endowed to it vests in it but the idol has no beneficial interest in the endowment. The beneficiaries are the worshippers. Dedication may be made orally or can be inferred from the conduct or from a given set of facts and circumstances. There need not be a document to evidence dedication to the public. The consciousness of the manager of the temple or the devotees as to the public character of the temple; gift of properties by the public or grant by the ruler or Government; and long use by the public as of right to worship in the temple are relevant facts drawing a presumption strongly in favour of the view that the temple is a public temple. The true character of the temple may be decided by taking into consideration diverse circumstances. Though the management of a temple by the members of the family for a long time, is a factor in favour of the view that the temple is a private temple, it is not conclusive. It requires to be considered in the light of other facts or circumstances. Internal management of the temple is a mode of orderly discipline or the devotees are allowed to enter into the temple to worship at particular time or after some duration or after the headman leaves the temple are not conclusive. The nature of the temple and its location are also relevant facts. The right of the public to worship in the temple is a matter of inference.

21. Dedication to the public may be proved by evidence or circumstances obtainable in given facts and circumstances. In given set of facts, it is not possible to prove actual dedication which may be inferred on the proved facts that place of public religious worship has been used as of right by the general public or a section thereof as such place without let or hindrance. In a public debuttar or endowment, the dedication is for the use or benefit of the public. But in a private endowment when property is set apart for the worship of the family idol, the public are not interested. The mere fact that the management has been in the hands of the members of the family itself is not a circumstance to

> conclude that the temple is a private trust. In a given case management by the members of the family may give rise to an inference that the temple is impressed with the character of a private temple and assumes importance in the absence of an express dedication through a document. As stated earlier, consciousness of the manager or the devotees in the user by the public must be as of right. If the general public have always made use of the temple for the public worship and devotion in the same way as they do in other temples, it is a strong circumstance in favour of the conclusiveness of public temple. The origin of the temple, when lost in antiquity, it is difficult to prove dedication to public worship. It must be inferred only from the proved facts and circumstances of a given case. No set of general principles could be laid."

This decision lays down the parameters for testing whether a particular temple is a private temple, or a public temple, and reiterates that though the property endowed to it vests in the idol, it has no beneficial interest in it and that the beneficiaries are worshippers. It also acknowledges that in a given case the management of the temple may be by the members of a family.

The conclusions drawn by us in the present case, are not in any way inconsistent with this decision and the accepted premise in the present case is that the Temple is a public temple.

B) In ***Deep Chand vs. The State of Uttar Pradesh and Others***[22] , the questions that arose for consideration were concerning the validity of a scheme framed by the State pursuant to the provisions of the Motor Vehicle Act, 1939. Thereafter, Parliament enacted the Motor Vehicle (Amendment) Act, 1956,

which inserted Chapter IVA into the principal Act. The matter was tested on the principles of repugnancy as also on the anvil of Article 13 of the Constitution. The decision in ***Deep Chand*** (supra) thus has no application to the present controversy.

109. Having considered the nature of Shebatiship of the Temple and the effect of developments such as the Constitution (Twenty Sixth Amendment) Act, 1971 and the death of the Ruler who has signed the Covenant, we now turn to the other issues projected by the learned counsel for various parties.

I] <u>Bar under Article 363 of the Constitution of India</u>

i) In para 77 of his opinion in ***Madhav Rao Jivaji Rao Scindia[12],*** Hidayatullah, C.J., had observed that insofar as the guarantees that had found place in legislative measures, the provisions of Article 362 need not be invoked and the dispute could be decided on the basis of the Statutes which were enacted having due regard to the contents of the Covenant, and that such a case would not attract Article 362. To similar effect are the observations made by the Majority Judgment in that decision in the portions quoted hereinabove. The matter was put beyond any doubt in para 60 of the leading judgment in ***Raghunathrao Ganpatrao[14]*** where the ratio in ***Madhav Rao Jivaji Rao***

Scindia[12] was dealt with, and it was held that the jurisdiction of the Courts would not get excluded where relief was found in a statutory provision enacted in terms of Article 362 of the Constitution. The tenor of the Suits as filed was to agitate that the expression "Ruler of Travancore" appearing in Chapter III of Part I of the TC Act ought to be construed in the manner suggested by the plaintiffs. The relief was thus founded on the interpretation suggested by the plaintiffs and therefore would not come within the bar engrafted in Article 363 of the Constitution. The decisions of this Court in ***Madhav Rao Jivaji Rao Scindia***[12] as well as in ***Raghunathrao Ganpatrao***[14] have clearly ruled out the applicability of any such bar.

ii) As observed in the judgments of Hidayatullah, C.J., and the majority judgment as well as in the opinion of Hegde, J., in order to get the bar under Article 363 attracted, the dispute must fall under either of two limbs of Article 363. Under the first limb the dispute must arise out of the provisions of the Covenant, whereas under the second limb the dispute must be with respect to the right arising out of a provision of the Constitution relating to the Covenant.

The dispute raised in the Suits in the present case, which were sought to be transferred to the High Court, had questioned the authority of the appellant No.1 only from the stand point of the expression "Ruler of Travancore"

appearing in Chapter III of Part I of the TC Act, and would not get covered under either of the limbs of Article 363 of the Constitution.

iii) The reliance placed on the decision of this Court in ***Colonel His Highness Sawai Tej Singhji of Alwar vs. Union of India and anr.***[16] was thus completely misplaced. In that case, the Suit was filed by the Ruler of Alwar praying that three properties namely the Secretariat Building, Daulat Khana building and Indra Viman Station be declared as private properties of said Ruler and that State of Rajasthan be ejected from those properties or in the alternative be directed to pay rent to said Ruler. The issue was whether those three properties were accepted to be private properties of the Ruler. Since the Suit directly related to the scope of the description of the property in the concerned documents pertaining to accession, in view of the bar under Article 363 of the Constitution, the Suits were found to be not maintainable. A submission was advanced before this Court that in the "parent" Covenant the property was described to be the private property of the Ruler, and subsequent communications including the one dated 14.09.1949, would not operate as a bar under Article 363 of the Constitution. In this backdrop the matter was dealt with by this Court as under:-

> **"20.** Another contention raised by Mr Sharma was that even if the letter dated September 14, 1949 was held to evidence an

> agreement, it was not hit by the provisions of Article 363 of the Constitution inasmuch as it was an agreement resulting from the Rajasthan Covenant which alone, according to him, was the agreement covered by the article. This contention is also without substance. Article 363 of the Constitution bars the jurisdiction of all courts in any disputes arising out of any agreement which was entered into or executed before the commencement of the Constitution by any ruler of an Indian State to which the Government of India was a party. The operation of the article is not limited to any "Parent" covenant and every agreement whether it is primary or one entered into in pursuance of the provisions of a preceding agreement would fall within the ambit of the article. Thus the fact that the agreement contained in the letter dated September 14, 1949 had resulted from action taken under the provisions of the Rajasthan Covenant, is no answer to the plea raised on behalf of the respondents that Article 363 of the Constitution is a bar to the maintainability of the two suits, although we may add, that the agreement did not flow directly from the Rajasthan Covenant but was entered into by ignoring and departing from the provisions of clause (2) of Article XII thereof."

iv) In the circumstances, we accept the submissions made on behalf of the State, as well as the concerned respondents, and hold that the bar under Article 363 of the Constitution of India would not get attracted in the present matter, and that the submissions in that behalf advanced on behalf of the appellants as well as the intervenors supporting them deserve to be rejected.

II] Submissions on the basis of Articles 25(1) and 26(b) of the Constitution

i) The submissions advanced by Mr. Deepak, learned Advocate for the Intervenors in this connection have been noted out in para 42 hereinabove.

However, no such submissions were either advanced before the High Court, or in this Court, on behalf of the appellants. No factual foundation was also laid either before the High Court or in the form of pleadings by the appellants before this Court.

ii) In the absence of pleadings and requisite issues having been raised by the competing claimants, it would be extremely difficult to enter into said issues so raised by Mr. Deepak, learned Advocate and consider whether the role played by the Royal Family as descendants of Maharaja Aditya and as "Padmanabhadasa" is essential and integral to the very foundation and identity of the Temple. Similarly, the question whether "Parashurama Padhati" being practiced has a distinct identity of its own action would also require complete elaboration and assessment of facts.

iii) We therefore accept the submissions of Mr. Gupta, learned Senior Advocate for the State that in the absence of any claim being raised in a properly instituted proceedings by an identifiable religious denomination, there would be no question of adjudicating or giving a finding regarding violation of any rights under Articles 25 and 26 of the Constitution, and that there would be no occasion to enter into the question whether or not the Temple is of a

denominational character as projected, or that the relationship between the "Ruler of Travancore" and the Temple could be said to be an essential or integral part of the Hindu religion in general.

iv) In the circumstances we refuse to enter into the questions raised by Mr. Deepak, learned Advocate for the Intervenors in these proceedings.

110. The legal issues having been dealt with, we must now consider what should be the "way forward". After the decision of the High Court, various orders were passed by this Court, committees were formed and inspections were undertaken. Inventorization has taken place with respect to most of the Kallaras, the antiques and artifacts of the Temple have been digitized, and for the last more than 9 years various steps have been taken under the directions of this Court by all the authorities. The State has also expended considerable amounts as stated in the tabular chart referred to in para 44 hereinabove.

i) Consistent with the stand that the Temple is a public Temple and that no remuneration at any stage was derived in the past or would be aimed at in future, a suggestion was made on behalf of the appellants in the form of a Note in response to the affidavit in reply filed on behalf of the State. In the said Note, which is set out in detail in Paragraph 47 hereinabove, the appellants have

suggested the composition of an Administrative Committee, and of an Advisory Committee. Broadly, it is suggested that the Administrative Committee be formed comprising of five Members, the Chairperson being a retired Indian Administrative Service Officer of the rank of Secretary to Government of Kerala; the other four members being (i) a nominee of the Trustee; (ii) the Chief Thantri of the Temple; (iii) a nominee of the Government of Kerala; and (iv) a Member to be nominated by the Ministry of Culture, Government of India. In terms of para 8 of the Note, the Trustee that is to say the Manager or Shebait of the Temple would be guided by the advice given by the Advisory Committee.

ii) On the other hand, the suggestion made on behalf of the State is to follow the model statutorily enacted for Guruvayoor Devaswom, and thus the Managing Committee would be of eight Members comprising of two ex-officio members, namely, Padmanabhadasa and the Senior Thantri; while the other six Members would be nominated by the Hindus among the Council of Ministers; one of them being Member of the Scheduled Castes and Scheduled Tribes while one being a woman, and the other being a representative of the employees of the Temple.

111. It may be noted here that the following Committees were constituted from time to time by this Court.

A) By Order dated 02.05.2011, two observers were appointed for the purposes of inventorization.

B) By Order dated 21.07.2011, an Expert Committee was appointed for the purposes of Inventory, Conservation and Security.

By same order, Overseeing Committee was also appointed to supervise and guide the working of the Expert Committee.

C) The Order dated 13.02.2013 refers to the Temple Committee in terms of Section 20 of the TC Act to advise the Ruler of Travancore.

D) By Order dated 11.12.2013, Conservation and Restoration Committee was appointed for Structural Renovation and Restoration.

E) Since the Executive Officer proceeded on leave, an Interim Administrative Committee was appointed vide Order dated 24.04.2014 for day to day functions relating to the Temple.

F) By Orders dated 09.05.2017 and 04.07.2017, apart from reconstituting the Conservation Committee, a Selection

Committee for Sreekovil was also appointed to select the suitable person having requisite knowledge.

These Committees were constituted at the interim stage of the proceedings in this Court.

112. We may, at this stage, also refer to some of the Reports submitted by the Administrative Committee appointed by this Court:-

i) In the Report dated 05.01.2018, it was reported that taking advantage of the fact that an ad hoc committee was at the helm of the affairs of the Temple, some of the occupants of the structures on East Nada, North Gate and Utsava Madom Building continued to be or were in illegal and unauthorized occupation and that requisite action to resume the possession of said structures from such occupants ought to be undertaken.

ii) In the Report dated 01.01.2020, it was stated that from 04.01l.2019 to 20.12.2019, the offerings made by the devotees visiting the Temple, in the 'Kanikka' amounted to Rs.5,68,96,260/- (Rupees Five Crores Sixty Eight Lakhs Ninety Six Thousand Two Hundred and Sixty Only).

iii) The Report dated 27.05.2020, under the signature of the District Judge, referred to the earlier Resolution dated 13.06.2017 and the direction issued by this Court in its Order dated 04.07.2017 requesting the State to nominate a panel of three officers from the Indian Audit and Accounts Service (IA &AS) to oversee the audit and accounts of the Temple and submit quarterly reports to the Administrative Committee. The Report stated:-

> "I may also report that the Administrative Committee is perfectly in the darkness regarding the financial position and accounts of the Temple. Different District Judges discharged duties as Chairmen of the Administrative Committee during different periods since the inception of the Committee as per the directions of the Hon'ble Supreme Court. So far, the respective Executive Officers, in charge of the financial matters of the Temple, have not produced either the budget proposals or the statement of accounts before the Administrative Committee.
>
> … … …
>
> The Executive Officer informed me that as the Principal Accountant General raised queries on the remuneration of the serving IAAS Officers and the State Government was not in a position to meet the expenses, the direction of the Hon'ble Supreme Court could not be complied with. Subsequently, on 18.09.2017, the Administrative Committee resolved the following:-
>
> > '(i) The service of an IA & AS Officer is required to oversee the audit conducted by the Internal Auditor and Statutory Auditor.
> > (ii) The service of a serving IA & AS Officer is required on foreign service terms.
> > (iii) In addition, the services of two non IA & AS Officers, who are in service, is also required on foreign service terms to assist the IA & AS Officer.'

> The Committee also authorized the Executive Officer to take up the matter with the Government and to bring the developments to the notice of the Hon'ble Supreme Court.
>
> So far, the directions of the Hon'ble Supreme Court to appoint an IA & AS Officer to oversee the internal audit and statutory audit has not been complied with. Still the Committee is in darkness on the financial position and accounts of the Temple."

113. The provisions of the TC Act with respect to the administration of the Temple are clear:-

a) Under Section 18(2), the administration shall be conducted. "Subject to the control and supervision of the Ruler of Travancore, by an Executive Officer appointed by him."

b) "Sree Padmanabhaswamy Temple Committee" composed of three members nominated by the Ruler of Travancore in terms of Section 20 is to advise the Ruler of Travancore in the discharge of his functions.

The Statute has thus vested the power of appointing the Executive Officer and of forming the Advisory Committee, in the Ruler of Travancore.

In the Note, the appellants have stated:-

(i) "The Trustee shall delegate his powers of administration under Section 18(2)" to the Administrative Committee which "shall administer the Temple through an Executive Officer to be appointed by the Committee".

(ii) On all policy matters, the Trustee shall be guided by the advice of the Advisory Committee.

114. Having given our anxious consideration to the rival suggestions, the composition of the Committees as suggested by the appellants deserves acceptance, especially in light of the conclusions arrived by us that the Managership or the Shebaitship of the Temple continues with the Family. As against the administration contemplated by Chapter III of Part I of the TC Act in the hands of the Ruler of Travancore in absolute terms, the course now suggested by the appellants is quite balanced. The Composition of the Administrative Committee as suggested is broad based and would not be loaded in favour or against the Trustee. However, considering the fact that the present interim Administrative Committee headed by the District Judge is in seisin for the last more than five years, and various District Judges as Chairpersons of the Committee conducted themselves quite well, in our view, a minor change in the Administrative Committee suggested by the appellants in their Note is called for. Instead of a retired Indian Administrative Service Officer of the rank of Secretary to the Government of Kerala as the Chairperson of the Administrative Committee, in the interest of justice, the District Judge, Thiruvananthapuram shall be the Chairperson of the Administrative

Committee. Needless to say that the present Chairperson of the Interim Administrative Committee shall continue to be the Chairperson so long as he holds the post of the District Judge, Thiruvananthapuram. The composition of the Advisory Committee will ensure that the administration of the Temple is conducted in a fair and transparent manner.

115. We, therefore, accept the suggestions made by the appellants in their Note adverted to in detail in paragraph 47 hereinabove with regard to the constitution of the Administrative Committee and the Advisory Committee subject to the modification with respect to the Chairperson of the Administrative Committee as stated in the preceding paragraph. The appellant No.1 shall file an appropriate affidavit of undertaking within four weeks of this judgment in terms of paragraph 1 of the Note and also agreeing to the modification as stated above. The affidavit of undertaking so filed shall be binding on the appellant No.1 and all his successors.

Within four weeks of filing of the affidavit of undertaking, both the Committees shall be constituted and become functional. The Administrative Committee shall immediately appoint the Executive Officer. Upon the constitution of the Administrative Committee, the Interim Administrative

Committee appointed in terms of the Order dated 24.04.2014 shall cease to operate.

In terms of the Note submitted by the appellants the powers of "the Ruler of Travancore" under Section 18(2) of the TC Act shall stand delegated to the Administrative Committee while the Advisory Committee shall be deemed to be the Committee constituted in terms of Section 20 of the TC Act. It is made clear that all the members including the Chairpersons of the Administrative Committee and the Advisory Committee must be Hindus and fulfil the requirements in Section 2(aa) of the TC Act.

All the other Committees constituted in terms of various orders passed by this Court shall continue for four months, and it shall be upto the Advisory Committee to consider whether the services of those Committees are required or not.

It must also be stated that the present security arrangements as deployed by the State Government shall be continued, but the expenses in that behalf shall be borne by the Temple hereafter.

116. The Administrative Committee and the Advisory Committee shall do well to discharge all their functions including performance of the worship of the deity, maintenance of its properties, diligently and in the best interest of the Temple, and provide adequate and requisite facilities to the worshippers; and more particularly:-

(a) Preserve all treasures and properties endowed to Sree Padmanabhaswamy and those belonging to the Temple.

(b) Protect all tenanted properties and take appropriate measures to ensure reasonable returns from such tenanted properties.

(c) Ensure that all rituals and religious practices are performed in accordance with the instructions and guidance of the Chief Thantri of the Temple and according to custom and traditions. In temporal matters, the Committees shall be guided by the advice given by the Chief Thanthri. The designation of the Chief Thanthri shall be done in accordance with the customs and traditions.

(d) Shall take appropriate steps to return to the State the amounts expended by the State Government as catalogued in the Chart in paragraph No.44 hereinabove.

(e) All the income accruing to the Temple, as well as the offerings made by the worshippers, shall be expended in the following manner:

(i) To improve the facilities for the worshippers; and

(ii) For such religious and charitable purposes as the Advisory Committee may deem appropriate; and

(iii) In investments that will fetch reasonable returns and ensure that the properties of the Temple are completely safe and secure.

(f) Recover and retrieve any property or funds of the Temple which have been put to misuse or have been in unauthorized occupation or misappropriated.

(g) Shall order audit for the last 25 years as suggested by the learned *Amicus Curiae*. The audit shall be conducted by a firm of reputed Chartered Accountants. The Advisory Committee shall

also consider what further steps need to be taken for the preservation of the Temple properties, both movable and immovable.

(h) Take appropriate steps for conservation of the Temple and its precincts, as well as for improvement of all the facilities.

(i) Shall consider whether Kallara B is to be opened for the purpose of inventorization. The interim orders dated 27.11.2014 and 04.07.2017 passed by this Court had recorded that Kallara B was not opened, and it was directed that inventorization with respect to said Kallara B be undertaken only after obtaining express orders from this Court. We deem it appropriate to leave this issue to the best judgement and discretion of the Committees.

(j) Conduct all the obligations which from time to time were bestowed on various Committees by this Court including that of the Selection Committee for Sreekovil.

(k) Shall file Reports in this Court by the second week of December, 2020 stating all the developments in brief till then. The next

Report shall be filed after the accounts for the year ending 31.03.2021 are audited.

(l) Shall file the audited accounts and the Balance Sheet with the office of the Accountant General for the State, every year.

117. In light of the specific submission made by the appellants, the appellant No.1 and his successors shall not be entitled to draw any remuneration for his or their services as the Manager or Trustee. The Executive Officer appointed by the Administrative Committee shall be entitled to a modest and reasonable remuneration to be fixed by the Administrative Committee.

118. Civil Appeals thus, stand allowed subject to above directions, without any order as to costs.

119. Writ Petition (Civil) No.518 of 2011 was filed seeking following principal relief:

> "Give directions to the Government of India and the Reserve Bank of India to evolve and implement a mechanism whereby the treasures of Sree Padmanabha Swamy Temple can be preserved intact, and at the same time be put to proper and profitable use without possibilities of corrupt dealings, erosion and wastage……"

In view of the aforementioned directions, nothing further is required to be done in this Writ Petition. The Writ Petition is accordingly disposed of.

120. Contempt Petition No.493 of 2019 was filed submitting, *inter alia*, that certain statements were made by the Temple Guard; and that the then Executive Officer was protecting said Temple Guard. Considering the nature of allegations, we see no reason to take cognizance of the same and the Contempt Petition is dismissed.

121. In the end, we must express our sincere gratitude for the assistance rendered by the learned *Amicus Curiae*, and also for his invaluable suggestions and guidance. We are also grateful to all the persons and members of various Committees who diligently discharged their obligations in answer to the suggestions made by this Court from time to time.

…….J.
(Uday Umesh Lalit)

…….J.
(Indu Malhotra)

New Delhi;
July 13, 2020.