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**2026 KLT OnLine 1151**

Hon'ble Mr. Justice Raja Vijayaraghavan V. & Hon'ble Mr. Justice K.V. Jayakumar

Krishna Kurupp v. State of Kerala

W.P.(C) No.32014 of 2025

Decided on 28th January, 2026

**Hindu Religious and Charitable Endowments Act 1951 (Madras), S.29 -- The duty cast upon the Commissioner under Section 29 of the Madras HR & CE Act is a sacred and sublime one -- While discharging the said duty, the Commissioner should bear in mind that the property belonged to the deity and the public is interested in the transactions.**

**Held:** The Trustee and Temple authorities are required to keep the Temple and the precincts in a serene and tranquil atmosphere. The duty cast upon the Commissioner under Section 29 of the Madras HR & CE Act is a sacred and sublime one. While discharging the said duty, the Commissioner should bear in mind that the property belonged to the deity and the public is interested in the transactions. (**Para.47**)

**Hindu Religious and Charitable Endowments Act 1951(Madras), S.29 -- The activities of a religious institution are not commercial in nature, and generating additional income by constructing more commercial complexes cannot be considered an act to protect or safeguard the interests of the deity or the Devaswom -- Devotees visit the temple to attain peace and satisfaction - The trustees and the board are obligated to ensure the provision of basic infrastructural facilities so that devotees can have a comfortable and peaceful darshan and actively participate in the poojas and rituals conducted therein.**

The activities of a religious institution are not commercial in nature, and generating additional income by constructing more commercial complexes cannot be considered an act to protect or safeguard the interests of the deity or the Devaswom. Devotees visit the temple to attain peace

and satisfaction. The trustees and the board are obligated to ensure the provision of basic infrastructural facilities so that devotees can have a comfortable and peaceful darshan and actively participate in the poojas and rituals conducted therein. **(para.46)**

**Hindu Religious and Charitable Endowments Act, 1951(Madras), S.29 -- The transfer of immovable property of the deity or idol should not be the rule, but it should be an exception.**

The transfer of immovable property of the deity or idol should not be the rule, but it should be an exception. **(para.48)**

**Hindu Religious and Charitable Endowments Act 1951(Madras), S.29 -- The Commissioner, while exercising its sacred duties, shall give utmost weight to the interest of the deity and devotees at large.**

On going through Ext.P15 proceedings, it could be seen that undue weight was given to the 'public purpose doctrine' rather than the interest of the deity. The Commissioner, while exercising its sacred duties, shall give utmost weight to the interest of the deity and devotees at large. The interest of the Trustee may be, sometimes, in conflict with the interest of the devotees or the general public. **(Para. 52)**

[2000 \(3\) KLT 129](#); [2022 \(4\) KLT 798](#);

[2007 \(4\) KLT 965 \(SC\)](#); [2013 \(3\) KLT 132](#);

[1979 KLT OnLine 1026 \(SC\)](#) & [2023 \(3\) KLT 541](#)

Referred to

Mahesh V Ramakrishnan &

Praveen K.S.

For Petitioners

S. Rajmohan (Sr. Government Pleader), R. Ranjanie,

Prabha R. Menon &amp; Manoj Ramaswamy

For Respondents

## JUDGMENT

**K. V. Jayakumar, J.**

This Writ Petition is filed under Article 226 of the Constitution of India, challenging Ext. P15 order of the 6th respondent, the Commissioner, Malabar Devaswom Board, wherein sanction was accorded to lease out 73 Cents of land in Resurvey No. 602/3 of Pulpally Village owned by the 8th respondent, Pulpally Devaswom, to the 10th respondent, the Pulpally Grama Panchayath, for a period of 33 years.

2. The writ petitioners state that Sree Pulpally Sitha Lava Kusha Temple is an ancient Temple of Malabar. The Temple property consists of the sanctum sanctorum of the main deities of the Temple, namely, Seetha devi, Lord Lava and Kusha (children of Seethadevi), Lord Sree Hanuman, Lord Shiva, Lord Ganapathi, Lord Subrahmanya, Vettaykkorumakan and Lord Dharmashastha. According to the petitioners, thousands of worshippers visit the Temple every year to pay offerings to the deities.

3. The petitioners contend that the Temple had extensive areas of landed properties. It is stated that due to mismanagement and corruption on the part of the Temple administration, including the Trustee, a large extent of the properties have been lost. At present, the Temple has 20 to 22 Acres of property in their direct possession and enjoyment.

4. The Temple and the sub-shrines are situated in Resurvey No. 605 of Pulpally Village. The properties surrounding the Temple are in Resurvey No. 602. Ext.P1 is the true copy of the Adangal Extract of Resurvey No. 602/3.

5. The petitioners state that the 6th respondent, Commissioner, issued Ext.P2 notice dated 21.10.2022 stating that an application has been received from the Trustee of the Temple seeking permission for transferring an extent of 73 Cents of landed property belonging to the

Temple situated in Resurvey No. 602/3 of Pulpally Village on lease to the Grama Panchayat for the purpose of expansion of the existing bus stand. The proposed lease was for a period of 33 years and the rate of monthly rent per Cent is ₹600/-. If the land is leased out, it would be beneficial for the Temple and that would increase the scope of development of the Temple. However, no details of the property were shown in the said notice or any survey plan was appended.

6. The 1st petitioner submitted Ext.P3 objection dated 21.11.2022 to the 6th respondent. In the objection, it is stated that the property in Resurvey No. 602/3 is situated contiguously with the property in which the sanctum sanctorum and the sub-shrines are situated. Moreover, there are several yielding rubber trees in that parcel of land. In the year 2018, there was an attempt to alienate a portion of the same land for constructing a new bus stand. Challenging that proposal, a suit was filed as O.S. No. 17 of 2018 before the Munsiff Court, Sulthabathery. The 9th respondent herein, Pulpally Grama Panchayath, has filed a written statement in that Original Suit contending that less than 35 Cents of property is necessary for the expansion of the bus stand. Now the attempt of the temple authorities is to alienate a larger extent of property in the name of development of the bus stand.

7. The petitioners contended that the new lease proposal would adversely affect the rites and ceremonies of the temple. They argued that the proposal would permanently destroy the serene nature of the temple compound. Challenging Ext.P1 notice, the 1st petitioner approached this Court and preferred W.P.(C) No 10392/2023, which was disposed of vide Ext.P4 judgment dated 11.07.2023.

8. The petitioners assert that in that judgment, this Court has cautioned the authorities to take extreme care and to scrupulously follow the mandatory provisions of the Madras Hindu Religious & Charitable Endowments Act, 1951 (for the sake of brevity, 'the Madras HR & CE Act'). Thereafter, the 9th respondent Trustee and Executive Officer of the Temple published Ext.P5 notice regarding the leasing out of 73 cents belonging to the 8th respondent, Pulpally

Devaswom, to the Grama Panchayat on a permanent lease for 33 years for a monthly rent of ₹600/-. Ext.P5 notice was published in Kerala Kamudi daily dated 28.09.2023.

**9.** The 1st petitioner had again submitted a detailed objection. The petitioners asserted that, apart from the paper publication, no statutory notice as mandated under Section 29 of the Madras HR&CE Act was published by the Commissioner after Ext.P4 judgment of this Court. The non-compliance of Section 29 of the Madras HR & CE Act has also been raised as an objection by the petitioners. Even though several objectors appeared before the Commissioner, sufficient opportunity was not given to them to raise their objections.

**10.** Later, it is contended that the Commissioner, vide order No. J5/3623/2022/MDB dated 07.03.2024 has granted permission for granting lease of the Devaswom land for 33 years (permanently) to the 10th respondent, Grama Panchayat, for the construction of the bus stand. Ext. P7 is the true copy of the said order.

**11.** The petitioners further assert that Ext. P7 order was passed without complying with the directives of this Court in Ext.P4 judgment and without affording a fair opportunity of being heard. Ext.P7 order was challenged by the petitioners by preferring W.P.(C) No.12962/2024 (Ext.P11). Pursuant to Ext.P11 judgment, the petitioners appeared through counsel before the Commissioner and filed detailed additional statements on 18.03.2025 (Ext.P12). The 9th respondent, the Trustee of the Temple, has also filed a detailed reply before the Commissioner.

**12.** The petitioners have filed I.A. No.14/2025 before the Commissioner for the appointment of an Advocate Commissioner to examine the total number of rooms available in the shopping complex of the temple, rooms lying vacant therein, etc. But the Commissioner has dismissed the application vide Ext.P14 order.

**13.** Thereafter, the Commissioner has passed Ext.P15 order granting sanction to the 8th respondent, Pulpally Devaswom, to lease out 73 Cents of Devaswom property in Resurvey No. 602/3 of Pulpally Village for a period of 33 years for a monthly rent of ₹600/- per Cent, with an

increase by 12% every three years. In this factual matrix, the petitioners have approached this Court claiming the following reliefs:

“(a) Issue a writ of Certiorari or other appropriate writ, order or direction to call for the entire records culminated in Ext.P15 and to quash the same;

(b)To declare that the sanction for alienation of 73 Cents of in RS 602/3 of Pupalli Village own by the 8th Respondent Devaswom on permanent lease for 33 years for a monthly rent of Rs.600/- to the 10th Respondent Grama Panchayath for construction of 'Bus Stand' is merely for a public purpose and that the same is neither necessary nor beneficial to the 8th Respondent Devaswom and that the 6th Respondent Commissioner has no jurisdiction u/Sec.29 to accord sanction for such alienation of temple property for public purpose;

(c)Issue a writ of Mandamus or other appropriate writ, order or direction directing the Respondents 8 and 9, not to transfer possession of the property covered by Ext.P15 to the 10th Respondent.”

**14.** The 6th respondent, the Commissioner, MDB has filed a counter affidavit contending that Section 29 of the Madras HR & CE Act permits the Commissioner to grant sanction for the sale, mortgage, lease or exchange of the Temple property, if it is necessary or beneficial to the institution. It is stated in the counter affidavit that the Devaswom will get an amount of Rs.525,600/- as yearly lease rent. The Trustee of the temple had a proposal to construct a shopping complex in the temple land, utilising the benefits accrued from the lease arrangement. It is also submitted that the development of the existing bus stand is indispensable for the Panchayat, and if the temple property was not given on lease, the existing bus stand would be shifted to a place far from the temple. It would adversely affect the existing commercial shopping complexes owned by the temple. It is further stated that, if the proposed lease is fructified, in addition to the reasonable lease rent, there will be a requirement for more shopping complexes, and the inflow of devotees would definitely increase due to the increase of transportation from all parts of the district and suburbs.

**15.** The Commissioner, MDB contended in the counter that the petitioners are filing Writ Petitions one by one and this is the third round of litigation. These Writ Petitions are filed due to personal animosity of the petitioners with the Trustee. The respondent Nos. 8 and 9 have also filed counter-affidavits as directed by this Court. Ext.P15 Order was published on the Panchayat Office notice board, Village Office, Devaswom office, and also notified in the Gazette. Exts.R8A and R8B are the news items published in various newspapers.

**16.** It is stated that, since Pulpally Panchayat has developed into a large township, the available space in the existing bus stand is insufficient to accommodate the interstate buses arriving with devotees. Considering the welfare and needs of the general public, the Devaswom has adhered to the requests of Pulpally Grama Panchayat to lease out its land for the expansion and construction of the bus stand. Under the proposed lease arrangement, the Devaswom does not lose ownership of the land; instead, it stands to generate additional income, which can be utilized for the development of the temple.

**17.** Pursuant to Ext.P4 judgment, Ext.R8C, Memorandum of Understanding, was executed between the Devaswom and the Panchayat on 14.03.2024. It is further submitted that Ext.R8C, Memorandum of Understanding, would clearly safeguard the interest and welfare of the Devaswom. Ext.P15 order was passed after hearing all the objections of the petitioners. The temple premises and the land proposed to be leased to the Panchayat are separated by a road, which, by the lease agreement, the Panchayath undertakes to maintain at a 6 metre width and to construct a drainage facility along the proposed road. Respondents 8 and 9 stated in the counter that the present bus stand, if developed, will only enhance the value of Pulpally town and the commercial township proposed to be constructed by the Devaswom will give more job opportunities for the local people.

**18.** The petitioners have filed a reply affidavit refuting the allegations in the counter-affidavits.

**19.** We have heard the submissions of Sri. Mahesh V. Ramakrishnan, learned counsel for the petitioners, Smt. Renjanie, learned Standing Counsel for the Malabar Devaswom Board, Smt. Prabha R. Menon, learned counsel for respondents 8 and 9 and Sri. Manoj Ramaswamy, learned Standing Counsel for Pulpally Grama Panchayat.

### **Submissions of the learned counsel for the Petitioners**

**20.** The learned counsel for the petitioner would submit that Ext.P15 order of the 6th respondent is vitiated as it is arbitrary, irrational and violative of the mandatory legal provisions regarding the issuance of such order. The impugned order was passed in total disregard to Exts.P4 and P11 judgments of this Court. It was passed, violating the mandate of Section 29 of the Madras HR & CE Act and the Rules made thereunder.

**21.** A notice issued under Section 29 of the Madras HR & CE Act must contain the exact details of the property intended to be transferred, including its survey numbers, clear description of the boundary, extent, location etc. Such details are not shown in Ext.P5 instead, some details are stated vaguely. It is further submitted that no survey plan was attached along with Ext. P5 notice demarcating the land intended to be leased out. Ext.P5 notice is not sustainable for the reason that it was issued by the Trustee and not by the Commissioner.

**22.** The learned counsel for the petitioner then points out that pursuant to Ext.P11 judgment, the 6th respondent ought to have followed the mandatory procedures. The learned counsel would further argue that Sree Pulppally Sita Lava Kusha Temple is an A-grade temple and the annual income of the said temple is above one Crore, as evident from Ext.P15 itself. The temple has sufficient monthly income to meet the requirements and there are no financial difficulties. The individual commercial interest for the trustee is the only reason for alienation of Devaswom property under Section 29 of the Madras HR & CE Act. An alienation under Section 29 of the Madras HR & CE Act can only be made in case of necessity, which has been established upon a detailed enquiry and not based on the mere whims and fancies of the temple administration. Ext.P15 order is silent on this aspect.



**23.** It is further contended that respondents 5 to 9 are duty-bound to protect and preserve the interests of the deity and not to alienate the properties by pointing out commercial aspects of such transactions. It is pointed out by the counsel for the petitioners that some financial benefits alone cannot be a ground to grant sanction for the transfer of interest under Section 29 of the Madras HR & CE Act. Ext.P15 order does not show the circumstance which makes the transfer of interest of the temple land essential or imperative. The present annual income is sufficient to meet the expenses of the temple. Ext.P11 judgment directed the 6th respondent to pass orders by proceeding afresh. Therefore, the 6th respondent ought to have issued fresh notification in accordance with law. Ext.P15 order is vitiated on that ground for non-compliance of the procedural formalities.

**24.** The learned counsel would then submit that Ext.P15 order is issued and attempted to be implemented reveals the callous attitude of the authorities, especially the Commissioner while dealing with the immovable properties of the temples. Ext.P11 judgment made it clear that the 'public purpose' doctrine is not available in the case of temple property. The alienation, which is styled as a lease for 33 years, is a permanent alienation. Once the property is given for the construction of a bus stand, the same cannot be restored under any circumstances. This important aspect was not considered by the 6th respondent while passing Ext.P15 order. The learned counsel further submitted that the property proposed to be leased out is an indispensable part of the temple property, especially during the temple festivals. Respondent Nos. 6 to 9 miserably failed to protect and safeguard the interests of the Devaswom. The learned counsel for the petitioners has placed reliance on the judgments in Payyannur Co-op. Educational Society v. Narayanan ([2000 \(3\) KLT 129](#)), Krishna Kumar T v. Cochin Devaswom Board and Others ([2022 \(4\) KLT 798](#)) and A.A. Gopalakrishnan v. Cochin Devaswom Board and Others ([2007 \(4\) KLT 965 \(SC\)](#)) = (2007) 7 SCC 482).

**25.** The learned counsel for the petitioners has concluded his argument by submitting that there is no justification on the part of respondent Nos. 6, 9 and 10 to alienate the temple property, in an illegal and unjustifiable manner.

## **Submissions of the learned counsel for the respondents 6 to 10**

**26.** On the other hand, the Standing Counsel for MDB and the Devaswom submitted that the impugned order was passed in strict compliance with the provisions of the Act and Rules. He would contend that the proposed lease arrangement is beneficial for the temple. Ext.P15 was passed after hearing the objections of the petitioners and others and pursuant to the directives issued by this Court in Exts.P4 and P11 judgments. The proposal, if implemented, would generate more income to the temple, which could be effectively used for the developmental purposes of the temple. The Trustee of the temple had plans to construct more shopping complexes in the temple land and thereby augment the income of the temple. The expansion of the bus stand near the temple would enhance the transportation facility, and more devotees would come to the temple within the State and from other States. The petitioners approached this Court without having recourse to the statutory appeal under Section 29(4) of the Madras HR & CE Act.

**27.** On going through the pleadings, the following issues arose for our consideration:

1. What is the scope and ambit of alienation or transfer of interest of Devaswom land under Section 29 of the Madras HR & CE Act?
2. Whether the immovable property of Devaswom can be transferred or alienated for the sake of augmentation of the income?
3. Whether the public purpose doctrine has any relevance while transferring property of the deity under Section 29 of the Act?
4. Whether non-compliance of the procedural formalities under the Act and Rules would vitiate an order passed by the Commissioner under Section 29 of the Madras HR & CE Act?

## Judicial Evaluation

**28.** The matter in controversy revolves on Section 29 of the Act. By the impugned order, the 6th respondent, Commissioner of MDB, has granted sanction to let out 73 cents of land owned by Pulpally Devaswom to the 10th respondent, Pulpally Grama Panchayath, for the expansion of the bus stand. The property is situated in resurvey No.602/3. As per the impugned order, the monthly rent was fixed as Rs.600/ per Cent. There is a further stipulation for the enhancement of the rent by 12% every three years. The term of the lease was fixed as 33 years. An Memorandum of Understanding was executed between the 9th respondent and the Grama Panchayath to facilitate the transaction.

**29.** Before we proceed, it would be profitable to extract Section 29 of the Madras HR & CE Act.

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

Provided that before such sanction is accorded the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner.

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

(2) When according such sanction, the Commissioner may impose such conditions and give such directions as he may deem necessary regarding the utilization of the amount

raised by the transaction the investment thereof and in the case of a mortgage, regarding the discharge of the same within a reasonable period.

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

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

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

**30.** Section 29 of the Madras HR & CE Act enjoins that a transfer of interest in any immovable property belonging to a religious institution by way of exchange, sale or mortgage and any lease shall be void unless it is sanctioned by the Commissioner. On going through Section 29 of the Madras HR & CE Act, it is clear that the Commissioner has to consider two aspects before granting sanction for the transfer of interest in an immovable property. Firstly, the necessity for such alienation or transfer and secondly, it is for the beneficial use of the institution.

**31.** In the present case, the SreeSitha Lava Kusha Temple is classified as an A-grade temple managed by the 9th respondent, as the Hereditary Trustee and Executive Officer, under the supervisory control of the MDB. It is admitted that the temple generates an annual income of more than one Crore rupees. According to the learned counsel for the petitioner, this income is more than sufficient to cover the expenses related to daily rites, ceremonies, and for the conduct of the festival. It is also pointed out that the said Devaswom already owns three commercial shopping complexes, with certain unoccupied rooms therein. There is no necessity to augment or increase the income of the temple. The management of temple affairs is not a

commercial activity, and therefore, there should be a limit or ceiling on the augmentation of the Devaswom's resources.

**32.** The second limb of Section 29 of the Madras HR & CE Act is that the alienation or transfer should be for the beneficial use of the Temple. No doubt, the proposed lease arrangement, if implemented, would fetch an amount of Rs.5,25,600 ( $73 \times 12 \times 600$ ) annually. There is a stipulation in the MOU to increase the rent by 12% every three years. The 9th respondent, the Managing Trustee of the Temple intended to construct more commercial complexes utilizing the extra income to augment the income. The learned counsel for the petitioner would point out that the augmentation of the income of the temple is at the cost of a permanent lease for about 33 years. The counsel expressed his anxiety that once the land is given for construction and expansion of a bus stand, which is for a public purpose, the possibility of getting the property back to the temple is very remote. According to the learned counsel for the petitioners, more than 14000 acres of properties have already been lost due to the mismanagement of the Malabar Devaswom Board and its officers. Further, alienation of the property of the Devaswom is against the interests of the Temple.

**33.** In A.A. Gopalakrishnan (supra), a Bench of three judges of the Apex Court held that the properties of deities, temples and Devaswom Boards are required to be protected and safeguarded by their Trustees/ Archaks/ Sebaitis / employees. In the said decision, the Apex Court has warned against the tendency of 'fence eating the crops' and observed that such instances should be dealt with sternly. The Apex Court in A. A. Gopalakrishnan (supra) observed as under:

"The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their Trustees / Archaks / Sebaitis /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 concerned authorities. 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."

**34.** The Division Bench of this Court in Travancore Devaswom Board v. Mohanan Nair ([2013 \(3\) KLT 132](#) = 2013 SCC OnLine Ker 24230), reiterated the law laid down in A.A. Gopalakrishnan (supra).

**35.** The Apex Court in M.V. Ramasubbiar and Others v. Manicka Narasimachari ([1979 KLT OnLine 1026 \(SC\)](#) = (1979) 2 SCC 65), while interpreting the provisions of the Trust Act 1882, has explained the nature of the fiduciary position of the Trustee. It is the duty of the Trustee of the property to be faithful to the Trust and execute any document with reasonable diligence in the manner an ordinary prudent man of business would conduct his own affairs.

**36.** In Payyannur Cooperative Educational Society (supra), a Bench of this Court observed as follows:

"23. The Commissioner is entrusted with the power to scrutinise the transactions by the trustees with regard to alienation or encumbrance of the endowed property. Thus a sacred duty is cast on the Commissioner and he should bear in mind that the property is belonging to the idol. Public are interested in the transactions. Merely because the trustee has not raised any objection it does not mean that green signal can be given by the Commissioner to grant sanction for the sale. Further, the Commissioner took the view because it is for starting a College, the purpose is laudable. In this view, the Commissioner has only found the necessity for the first defendant for purchasing the property. He has not considered the question whether there is any necessity for the Devaswom. The order shows that the price fixed is Rs.2,500/-. Incorporation of certain conditions in the sale deed also shows that the arrangements are only tentative. Regarding the fixation of the price, the Commissioner has based the price on the basis of the report of the Tahsildar. According to us, this fixation is

wrong. The vendor and the vendee should agree for the price. The Commissioner should find out whether the price is reasonable or not. The proposal should contain the price of the property. Here, what is done is that the Commissioner himself fixes the price of the property. Fixation of price is within the domain of the purchaser and the seller. What the Commissioner is to see is whether the price is reasonable. Ext. P2 produced by the plaintiffs will show that even in R. S. No. 30/2A there were transactions. Ext. A6 is dated 26.8.1981. Ext. A4 is dated 2.4.1980. The documents produced will show that the valuation arrived at by the Tahsildar by fixing the nominal value on the ground that no transaction has taken place within a period of two years in the vicinity was not based on any facts but without any proper enquiry.

24. The evidence adduced here will show that the Temple is having surplus funds and the amount has been deviated under Chirakkal Kovilakam. Thus, we are of the view that the price fixed by the Commissioner was very low. No doubt, the parties had fixed the price at Rs.20,000/-, which is also low when comparing the valuation shown in the document. This shows that there has been an attempt to knock away the property of the Devaswom by the first defendant. We are of the view that the first defendant, second defendant and the Commissioner had put their hands together. But the alienation of the property of the endowment was without any necessity and without any bona fide. Learned counsel for the appellants submitted that as a matter of fact, no income was obtained from the land sold and there the amount received as consideration is deposited in the Bank as fixed deposit, which is fetching income and therefore the transaction can be held to be beneficial to the trust."

**37.** In *K. Jayaprakashan v. State of Kerala* ([2023 \(3\) KLT 541](#) = 2023 KHC Online 327), this Court reiterated the above view.

**38.** Yet another argument advanced by the learned counsel for the petitioners is that the Commissioner has granted sanction for the proposed lease not in strict compliance with Section 29 of the Madras HR & CE Act and the Rules made thereunder. Proviso 1 of section

29(1) mandates that the Commissioner, before according sanction, for the exchange, sale, mortgage or lease of the Temple property, shall publish the particulars of the proposed transaction inviting objections and suggestions from the Trustees or persons having interest.

**39.** Proviso 2 states that in case of emergency, for granting sanction, the Commissioner may dispense with the procedure referred to in proviso (1) with the previous sanction of the Government. Section 29(3) mandates that an order passed under Sub-section (1) shall be communicated to the State Government and to the Trustee and shall be published in the manner prescribed in the Rules. Section 29(4) of the Act provides for a statutory appeal to the Government by any person having interest in the matter, within three months from the date of publication of the order.

**40.** At this juncture, it would be useful to extract the Rules made under Section 29(1) and (3) for easy reference.

### **Rules under Section 29(1) and (3)**

1.(1) Notice of the proposals for any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property belonging to, or given or endowed for the purposes of any religious institution shall contain particulars, in respect of the following, namely:

(a) nature of the proposed transaction;

(b) correct description of the properties relating to the proposed transaction with information regarding the survey number, extent and boundaries and ward number and door number also in the case of properties within the limits of municipalities and the City of Madras;

(c) the revenue assessed on the properties relating to the proposed transaction by way of land revenue, cess, quitrent, ground rent, property tax, etc.;



(d) any encumbrance to which the properties relating to the proposed transaction are subject;

(e) (i) In respect of proposals in which the value of the transaction exceeds Rs.4000 or where the extent of the lands involved in the proposal is 10 hectares and above, in at least one daily newspaper published in the language of the locality where the math or temple is situate:

Provided that where the proposal is in respect of a specific endowments the properties of which are not situate in the village in which the temple or math is situate, the notice shall be published in the village or villages in which the properties are situate.

(ii) In cases in which the value of the transaction does not exceed Rs.1000 or where the extent of the lands involved in the proposal is less than 26 acres, the notice shall be published in the District Gazette only.

Such publication shall be deemed to be sufficient intimation to person, having interest.

(f) if the proposal is for sale or lease, the probable price or the rental, as the case may be, that is expected.

The notice shall specify a reasonable time, being not less than 30 days from the date of the issue of the notice, within which objections or suggestions may be sent. It shall also specify the date on which an inquiry, if any, is proposed to be held to consider the objections or suggestions. A copy of the notice shall be served in person on, or sent by registered post with acknowledgement due to, the trustee or trustees of the religious institution concerned, and where the properties belong to a specific endowment, also to the trustee or trustees of the temple or math to which the specific endowment is attached. Any refusal or evasion to receive the notice shall be deemed to be sufficient notice.

(2) A copy of the notice shall be published by affixture-

(a) on the notice board of the office of the Commissioner and the Assistant Commissioner having jurisdiction over the area in which the math or temple concerned is situate;

(b) on the notice board or the front door of the math or temple concerned;

(c) on the notice board of the office of the municipal council including the Corporation of Madras or the village chavadi and if there is no village chavadi, in some other public place in the village in which the math or temple concerned is situate;

(d) in another conspicuous place in the locality which may be selected by the Commissioner in his discretion; and

Provided that where the proposal is in respect of a specific endowment, the properties of which are not situate in the village in which the temple or math is situate, the notice shall be published also in the village or villages in which the properties are situate.

Such publication shall be deemed to be sufficient intimation to persons having interest.

(e) (i) In respect of proposals in which the value of the transaction exceeds Rs.4000 or where the extent of the lands involved in the proposal is 25 acres and above, in at least one daily newspaper published in the language of the locality where the math or temple is situate.

Provided that where the proposal is in respect of a specific endowment, the properties of which are not situate in the village in which the temple or math is situate, the notice shall be published also in the village or villages in which the properties are situate.

(ii) In cases in which the value of the transaction does not exceed Rs.4,000 or where the extent of the lands involved in the proposal is less than 25 acres, the notice shall be published in the District Gazette only.

Such publication shall be deemed to be sufficient intimation to persons having interest.

2. A copy of the order sanctioning an exchange, sale or mortgage or lease for a term exceeding five years shall, in addition to being communicated to the trustee or trustees and the persons having interest, if any, who appeared in the proceedings, be published in the manner laid down in sub-rule (2) of Rule 1 for the publication of the notice.

The order shall also be published in the District Gazette in the language of the district concerned in the case of the math or temple or specific endowment attached to a math or temple situated in the district, or in the Fort St. George Gazette in the case of a math or temple or specific endowment attached to a math or temple situated in the City of Madras or to specific endowments attached to maths or temples situated in more than one district.

The publication of the order in the manner laid down above shall be deemed to be sufficient intimation to persons having interest.”

**41.** Rule 1 makes it clear that the Commissioner shall issue a notice incorporating all the details of the property, such as nature of the transaction, correct description of the properties, survey number, extent, boundaries, details of encumbrances, if any, etc. Rule 2 enjoins that a copy of the order sanctioning the proposal shall be communicated to the Trustee and persons having interest, if any, who appeared in the proceedings.

**42.** The learned counsel has pointed out a serious illegality that the notice under Section 29 of the Madras HR & CE Act and the Rules made thereunder are published by the Trustee of the Temple and not by the Commissioner. On going through the records, it could be seen that Ext.P2 notice under Section 29(1) was published by the Commissioner along with requisite

particulars. However, Ext.P5 paper publication is issued by the Trustee of the Devaswom. Merely because of the fact that the entire particulars of the property are not stated in Ext.P5 publication, it cannot be said that there is non-compliance of the Rules.

**43.** We have carefully considered the submissions advanced by the counsels for the parties in the light of the provisions of the Act, Rules and the dictum laid down by the Apex Court and this Court. In A.A. Gopalakrishnan (supra) and in Mohanan Nair (supra), the Apex Court and this Court have reiterated that the Trustees, the Devaswom Board and the employees of the Temple are duty-bound to protect and safeguard the interest of the deity. They are in a fiduciary relationship with the deity, which is a perpetual minor. In the present case, the Commissioner, by Ext.P15 order, granted permission to lease out 73 cents of the Devaswom property for a period of 33 years to facilitate the expansion and development of a bus stand. However, no objective analysis was conducted by the Commissioner regarding how this proposal would benefit the Temple. The order merely states that the Trustee has a proposal to construct commercial complexes on the remaining property of the Temple to enhance and augment its income. Records reveal that three commercial complexes have already been constructed by the Devaswom. Although the petitioners submitted an application to the Commissioner seeking the appointment of an Advocate Commissioner to examine the vacant shop rooms within the existing commercial complex and to assess the prospects of constructing a new complex, this request was disallowed by the Commissioner.

**44.** Without conducting an objective analysis as to the feasibility of a new commercial complex, how can the Commissioner assess that the proposal would be in the interest of the Devaswom?

**45.** Admittedly, the Devaswom is an A-grade temple with an annual income of one crore rupees. In such circumstances, we are of the firm view that there is no necessity to augment the temple's income by creating a lease, especially for a period of 33 years. It is pertinent to note that a leasehold right is both alienable and heritable. A lease for such a substantially long period—33 years—would assume the character of a permanent lease. In other words, the

Devaswom will have to transfer the exclusive possession of 73 cents of land to the transferee, the Grama Panchayat, in order to augment its income.

**46.** The activities of a religious institution are not commercial in nature, and generating additional income by constructing more commercial complexes cannot be considered an act to protect or safeguard the interests of the deity or the Devaswom. Devotees visit the temple to attain peace and satisfaction. The trustees and the board are obligated to ensure the provision of basic infrastructural facilities so that devotees can have a comfortable and peaceful darshan and actively participate in the poojas and rituals conducted therein.

**47.** The Trustee and Temple authorities are required to keep the Temple and the precincts in a serene and tranquil atmosphere. The duty cast upon the Commissioner under Section 29 of the Madras HR & CE Act is a sacred and sublime one. While discharging the said duty, the Commissioner should bear in mind that the property belonged to the deity and the public is interested in the transactions. In the instant case, it is stated in the impugned order itself that 24 complaints from individuals and a mass petition submitted by 34 persons were also recorded by the Commissioner. But nowhere it is stated in the impugned Order about the allegations in those complaints.

**48.** The transfer of interest of the temple properties, such as sale, exchange, lease, mortgage, or otherwise, should be sanctioned by the Commissioner only when the conditions stated in Section 29 of the Madras HR & CE Act are complied with. The transfer of immovable property of the deity or idol should not be the rule, but it should be an exception. Such a step would be resorted only on compelling reasons. A lease for a substantial long period of 33 years, would definitely take away or curtail the right of the Temple to enjoy the property.

**49.** Mere augmentation of income by letting out temple properties or by effecting any other transfer of interest in the immovable properties of a deity cannot, by itself, be construed as an activity undertaken for the protection or advancement of the interests of the deity. A temple is not a “commercial institution”, nor can its activities be equated to those of a business

enterprise. The primary object and purpose of religious institutions are not the maximisation of profit or the pursuit of financial gain, but the preservation of religious sanctity, spiritual heritage, and the proper performance of rituals and customary practices. The Malabar Devaswom Board is therefore expected to evolve and adhere to a clear mission and vision in the management of temples under its supervision, beyond the mere commercialisation of temple activities. The Board ought to strive to ensure that each temple under its administrative control becomes independent and self-sufficient in all respects, including the sustainable management of its resources. It is a matter of serious concern that several landed properties belonging to temples presently remain unattended and underutilised by the trustees and authorities in charge of temple administration. Even essential ritual materials such as flowers required for 'Archana' and coconuts used for 'Ganapathi Homam' and other religious ceremonies are being procured from external sources, despite the availability of cultivable temple lands. The Board is duty-bound to take effective steps to ensure optimal utilisation of such properties by encouraging the cultivation of trees, plants, and flowers necessary for temple rituals and rites. Such an approach would not only reduce dependency on external procurement but would also enhance the aesthetic, spiritual, and environmental character of temple premises, thereby preserving their serenity, sanctity, and tranquil atmosphere in consonance with their sacred purpose.

**50.** In Ext.P11 Judgment, this Court in paragraph 31 observed as follows:

“31. On the above contention raised by the learned Senior Counsel for Malabar Devaswom Board, we notice that Ext.P7 order dated 07.03.2024 of the Deputy Commissioner (Administration), who was holding the charge of the 6th respondent Commissioner, Malabar Devaswom Board, is one issued without taking note of the observations made by this Court in Ext.P4 judgment dated 11.07.2023 in W.P.(C)No.10392 of 2023 regarding nonapplicability of public purpose theory in respect of temple lands over which the interest of the Deity and the devotees alone shall prevail, and that an objective assessment of market rent of the property, in the light of the law laid down in the decision of this Court in T.Krishnakumar ([2022 \(4\) KLT 798](#)). Further, as fairly submitted by the learned Senior Counsel for Malabar Devaswom Board Smt.Beena C., the Deputy Commissioner

(Administration), who passed Ext.P7 order dated 07.03.2024, while holding charge of the 6th respondent Commissioner, Malabar Devaswom Board, is not a Law Graduate, who is not having the required qualification for holding the post of Devaswom Commissioner. On that ground as well, Ext.P7 order cannot be sustained in law.

In such circumstances, this writ petition is disposed of by setting aside Ext.P7 order dated 07.03.2024 of the Deputy Commissioner (Administration), who was holding the charge of the 6th respondent Commissioner, Malabar Devaswom Board, for the aforesaid reasons and by directing the Devaswom Commissioner to take a fresh decision in the matter, strictly in accordance with law, after taking note of the observations contained, as referred to hereinbefore, in Ext.P4 judgment of this Court dated 11.07.2023 in W.P.(C) No.10392 of 2023, as expeditiously as possible, within a period of three months from the date of receipt of a certified copy of this judgment. The order passed by the Devaswom Commissioner shall be one after adverting to the legal and factual contentions raised by both sides, a copy of which shall be communicated to both sides, immediately thereafter.”

**51.** In Ext.P11 judgment, this made it clear that public purpose theory is not applicable while taking a decision under Section 29 of the Madras HR & CE Act and the interest of the deity and devotees alone shall prevail. It is pertinent to note that no objective assessment of market rent was also done as per the law laid down in T. Krishnakumar (Supra).

**52.** On going through Ext.P15 proceedings, it could be seen that undue weight was given to the ‘public purpose doctrine’ rather than the interest of the deity. The Commissioner, while exercising its sacred duties, shall give utmost weight to the interest of the deity and devotees at large. The interest of the Trustee may be, sometimes, in conflict with the interest of the devotees or the general public.

**53.** In the light of the foregoing discussions, findings, and conclusions recorded hereinabove, we are of the considered view that Ext.P15 order issued by the 6th respondent Commissioner granting sanction for the alienation of 73 cents of land comprised in Resurvey No. 602/3 of

Pulpally Village, by way of a permanent lease for a period of 33 years in favour of the 10th respondent Grama Panchayat for the purpose of construction and expansion of a bus stand, is legally unsustainable, arbitrary, and wholly unjustifiable. We find that the impugned decision has been taken without due application of mind to the statutory obligations cast upon the authorities concerned and without satisfying the mandatory requirement that such alienation must demonstrably serve the interest, protection, and welfare of the deity and the religious institution. On the contrary, the proposed transaction neither advances the objects of the temple nor contributes to the preservation of its properties or religious functions. We further hold that the proposed transfer and alienation of temple property cannot be characterised as a bona fide exercise of administrative discretion, but is vitiated by lack of necessity, absence of compelling public interest directly connected with the temple administration, and failure to consider less intrusive alternatives. Consequently, Ext.P15 order is liable to be interfered with and is hereby quashed and set aside. We further direct respondent Nos. 8 and 9 not to transfer the possession of the property pursuant to Ext.P15 order to the 10th respondent, Pulpally Grama Panchayat.

In the result,

- i. The Writ Petition is allowed.
- ii. The impugned order of the Commissioner, Malabar Devaswom Board, granting sanction to let out 73 Cents of property for 33 years to the 10th respondent Grama Panchayat is hereby quashed and set aside.
- iii. No order as to costs.