

**BEFORE THE HONOURABLE HIGH COURT OF KERALA AT
ERNAKULAM**

(Special Original Jurisdiction)

W.P. (C) No. of 2015

Petitioners:

- 1. Rajendran K, @ Thridandy Swamy Sri Chaithanya Das Bharathi Maharaj, S/o. C.K VeluKutty aged 62 years, Sri Bhuwanesweri Temple, Karuvankallu, Karippur P.O, Malappuram District, 673638.**
- 2. Suresh Kumar S/o. Balan Nair,aged 45 years, 107, Plakkunchalil, Neelaeshwaram Post, Omassery Vazhi, Kozhikode – 673582.**
- 3. Baiju C.T. S/o.Shankaran, aged 40 years, Palakkunnummal, Neeleshwaram Post, Omassery Vazhi, Kozhikode – 673582.**
- 4. Ramanadhan, S/o.Ayyappan, aged 46 years, Valakkodan house, Chathallur, Edavana, Malapuram - 676541.**

V/s .

Respondents

- 1. State of Kerala rep., by Secretary Parliamentary Affairs and Revenue (Devaswom Department), General Administration Secretariat, Trivandrum.**
- 2. Principle Secretary to Government, Revenue Department, Secretariat, Trivandrum.**
- 3. Devaswom Minister, State of Kerala, Secretariat, Trivandrum.**
- 4. Malabar Devaswom Board rep., by Devaswom Commissioner Office of Malabar Devaswom Board, Kozhikode.**
- 5. District Collector, Kozhikode C.R Building, Mananchira Rd, Mananchira, Kozhikode - 673 001.**
- 6. District Collector, Malappuram Civil Station Collectrate, Malapuram - 676 505.**
- 7. District Collector, Kannur, Talap, Kannur, Kerala - 670002.**
- 8. District Collector Kasaragod, Collectrate, Kasargode, Kerala 671121.**

All notices and processes to the petitioners may be served through their counsel P.Sathisan & Associates, 1st Floor, Patel Complex, Basin Road, Ernakulam and that of the respondents are as shown above in the cause title.

MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLE
226 OF THE CONSTITUTION OF INDIA

STATEMENT OF FACTS

Petitioners beg to submit as follows:-

1. This petition is submitted on the unabated and incessant encroachment committed by private individuals and private organizations into the property of various temples coming under Malabar Devaswom Board, namely 4th respondent herein. It is submitted that in a very callous and casual manner issues on encroachment committed over temple properties by private individuals and institutions are being handled by the respondents in spite of clear and glaring material and records available with the Respondents regarding the said high handedness and illegality. The recovery or taking back of possession of such encroached land is mostly in absolute stalemate due to the deliberate negligence by the authorities. Seriously aggrieved by the same this petition is presented by the Petitioners. They are interested in the well-being of these temples and preservation of its properties as they are devotees and persons entitled to attend the functions and rituals in the temples.
2. To put it euphemistically the respondents project as a big step the self-claimed, recovery of hardly 3 hectares of land out of the mammoth extend of land of about 9877.2 hectares which had been

encroached upon illegally by many persons and agencies as stated above. As per a latest press release dated 26.6.2014 the Minister for Devaswom unequivocally admitted that 9877.2 hectares of land in Malabar Devaswom had been encroached upon already from which only the paltry extend of about 3hectares had been recovered. The copy of the press release downloaded from web site is produced and marked herewith as **Exhibit P-1.** It is submitted that quite astonishingly the statement made by the Minister pertains to and reveals a miniscule extend of the total extend of land encroached upon. Even if the extend specified by the Minister is taken as true, the recovery or conservancy had been miserably trivial and the State machinery is completely neglecting the temples and the temple properties for the sake of vested interest groups.

3. Even though loud declarations are being made about doing well being and charities to Hindu religious institutions and temples, it is evident that these persons in the helm of affairs claiming themselves as apostles of Hinduism ensure and shield enrichment by private individuals through illegal trespass into temple properties. The successive ministries and officialdom controlling the state machineries are supporting the encroachers to fulfill their evil motives at the expense and the cost of Hindu temples and Hindu religious organizations.
4. Numerous encroachments had been effected along with innumerable illegal assignments effected by the officials of the state machinery itself for their personal illegal enrichment. There is no enabling provision for the state to assign the lands and premises belonging to Temples. Section 3 (1) (10) of Kerala Land Reforms Act says that;

“Tenancies in respect of sites, tanks and premises of any temple ,mosque or church on which {includes sites belonging to temple ,mosque or church on which religious ceremonies are conducted} and sites of office building and other buildings attached to the temple, mosque or church, created by the owner, trustee or manager of such temple, mosque or church”

5. It is submitted that the land tribunals across the state and revenue authorities, with scant regard to any of the provisions applicable in the matter illegally assigned temple properties which are per se void. It is submitted that the Pattayams or assignment certificates issued by the authorities disregarding the above legal provision has to be treated as null and void where upon the possession of the illegal assignees are to be set at naught and immediate abatement of encroachment is essential. It is needless to submit that the deity is given the legal veil as of a perpetual minor as per settled legal position in the matter. Therefore, the encroachment if any effected are nonest in the eyes of Law.
6. The 1st respondent after elaborate appreciation of the matter considering all relevant records noted that the land belonging to temples under 4th respondent had been encroached upon by various private individuals / agencies. The authority specifically directed for actions being taken under Section 94 (A) of **Hindu Religious and Charitable Endowments Act**. The above direction was issued on 12.9.2014. Even after the expiry of more than 360 days as well, no furtherance had been effected by the respondents to comply the directions issued by 1st respondent. The copy of the said order issued by 1st respondent is produced herewith and marked as **Exhibit P2**
7. It is submitted, might be on absolute desperation due to inaction by others notified the issue to 2nd respondent as well, impliedly referring the sheer negligence by the officials in the revenue department to recover the properties of temples and accordingly the said order also had been promulgated and issued by 1st respondent wherein he had specifically mentioned certain details about temples and properties subjected to encroachment. As per the above communication dated 23.5.2015 the 2nd respondent was requested to issue and initiate steps in the matter of recovery of properties. This was necessitated due to the ostensible inaction by district collectors and staffs of revenue department. The copy of the same is produced herewith and marked as **Exhibit P3**. A collective reading of Exhibit P1, P2 and P3 clearly establish the unassailable

conclusion that the temple properties in the State of Kerala are put under misuse, encroachment and diversion for private benefits by the vested interest groups with the aid of officialdom in the state particularly of revenue department itself. These officials are hand-in-glove with these encroachers and they are siding these encroachments for illegal enrichment.

8. At the cost of temples, particularly under Malabar Devaswom Board, enrichment of private individuals is ensured by high officials and persons having ulterior intentions in the matter which include the political leaders and administrators as well. The huge proportion of encroachment that is happening in Malabar area over the properties under 4th Respondent does not require any special deliberation about the reason behind the same as the oblique motive is evident. When 98% of the total encroachments are in Malabar area, the other areas including Cochin and Travancore areas account only for 2%. This itself is an astonishing and embarrassing situation as the revenue authorities are bent upon misusing and diverting temple endowments for private uses. Without orders from this Hon'ble court the above high handedness could not be contained. There cannot be any assignments and legal possession by the encroachers over these properties.
9. It is submitted that Section 29 of HR and CE Act mandates mode and method for alienation of properties belonging to or given or endowed for purposes of religious institutions. It says that unless the commissioner, the 4th respondent herein specifically sanctions the alienation, the same shall have to be treated as null and void. The specific rider to the provision insists that the alienation has to be for the benefits of the institution. Without clear finding about the benefits and without the order by the Commissioner supporting the alienation, the transaction shall have to be set at naught. The further formalities to complete the transaction with respect to alienation and the like of the properties are narrated under Section 29. It is submitted that the present encroachments do not have any legal sanctity as stated above. Thus under all these counts the so

called assignments, if any, have no value at all and needs to be set at naught and needs a declaration to that effect.

10. One of the associates of petitioners applied before the authorities under Right to Information Act to compile the available details with the department. The shocking and extremely alarming information obtained as per the above requisition shows that the authorities are bent upon unabated supply of temple properties to private individuals and the agencies at par with the findings in Exhibit P-2. Copy of a few of the information compiled from the information gathered under RTI Act is produced herewith and marked as **Exhibit P4 Series.** Petitioners assure to produce further documents and information collected by them and available with them as stated above before this Hon'ble Court or before such other authorities as directed by this Hon'ble Court. Though petitioner and many others who are similarly placed made consecutive representations to protect the temple for petitioners as well no favorable actions were taken by respondents.
11. It is submitted that The Kerala Land Conservancy Act 1957 is applicable in the matter of temple properties and properties belonging to the Board. Invocation of the above provision in the matter of landed properties of the Board is highly essential. Without a direction from this Hon'ble court the above shall not be effectively implemented by the state officials. It is submitted that petitioners are persons having interest in the subject matter of all these temples coming under the purview of 4th respondent. They are persons entitled to attend and further they are habitually attending the performance of worship and service in these temples. Petitioners are representing all other devotees of various temples as well under Malabar Devaswom Board. The properties referred in Exhibit P1 to P4 are properties belonging to or given or endowed for the support of temples and / or for the performance of service or charity of public nature connected therewith. The properties referred therein include the land of the institutions and the premises therein as well. All these are properties to be classified as religious endowments and

these properties belonged to and even now belonging to these temples and the like under 4th respondent. All these properties are essentially required for religious and charitable activities in connection with different temples. These properties in fact belonged to and are belonging to the deity of the temples. It is submitted that the occupation or possession, under the guise of any assignment as well, by encroachers shall have no legal sustainability and has to be termed as sheer encroachment requiring recovery of the same by invoking the provisions of Kerala Land Conservancy Act or the like. Since the authorities are not exercising their authorities vested upon them petitioners have no other recourse but to approach to this Hon'ble court on the following mainly among other,

Grounds

1. It is submitted that the properties referred in Exhibit P1 to P4 are religious endowments\ endowments belonging to temples. These are essentially required for religious charities and other services in connection with various temples. These properties cannot be illegally possessed or take in custody by private individuals or agencies. The illegal assignments, if any, are only to be treated as null and void in view of Section 29 of **Hindu Religious and Charitable Endowments Act** and various pronouncements by Hon'ble Court. It is submitted that the provisions of Land Reforms Act specifically exclude religious endowments and properties of temples from the purview of the above Act. Thus, it is needless to say that the assignments if any made are only null and void.
2. It is submitted that the continuance of illegal assignments by revenue authorities and other authorities is sheer abuse of Law. It is submitted that as per provisions of HR and CE Act and Kerala Land Reforms Act the properties cannot be alienated except as permitted by law. In the case of the illegal possessions none of these provisions can be resorted to by encroachers or by the authorities who support the encroachers.
3. The reluctance and negligence by authorities to recover the properties belonging to temples is an extreme callous attitude and further it is a concerted effort with a view to make illegal enrichment to them and for the encroachers alike. At the cost of temples and religious endowments, private individuals and

agencies are illegally enriching themselves. There is discriminatory approach by the authorities in these matters against the temples.

4. It is submitted that the compilation of the entire data bank pertaining to the religious endowments and other properties belonging to temples under 4th respondent is essentially to be done at the earliest. The same is not being done to stall and create a hurdle to land conservancy proceedings as the inaction could prevent easy access to information. Revenue authorities are bent upon illegal assignments and they are not keen on protecting Hindu religious endowments. The same is a clear display and performance of discrimination to the Hindu religious endowments.

5. It is submitted that the negligence to comply Exhibit P2 and P3 clearly reveals the malafides, administrative bias and improprieties of respondents in preserving and protecting Hindu religious endowments and temple properties. The 4th respondent, in particular, has the bounden duty as any other respondent to preserve the religious endowments and other endowments of the temples. The negligence in this regard by the authorities necessitate a stringent action from this Hon'ble Court failing which the religious charitable activities and the very worship in temples shall become an absolute impossibility on account of continued unabated encroachments. The respondents are in fiduciously capacity and holds the properties in trust to the diety, temple and devotees including petitioners. On many scores there cannot be application of limitation act to the recovery of property and land conservancy proceedings removing encroachers from the properties.

6. It is submitted that protection of Hindu Religious Endowments and other endowments of temples are to be taken as responsibility by the state. After taking away the periodical revenue and proceeds generated in these temples at the behest of 4th Respondent Board, like any other Board, applicable to religious institutions of Hindus, these proceeds are utilized for various purposes but not for the protection of the property of the temple from where these proceeds are generated. This is sheer discrimination and administrative bias. Therefore emergent action is essential to recover, preserve, and safe-keep all the properties of temples.

For these reasons and other reasons and grounds to be urged at the time of hearing this Hon'ble Court may be pleased to,

1. To issue writ of Mandamus or such other writ or direction directing the Respondents 1 to 4 to initiate summary proceedings under Kerala Land Conservancy Act 1957 to

recover all properties of various temples under 4th respondent in illegal occupation or possession by anyone including private individuals / agencies as specified in Exhibit P1 to P3 and to submit periodical reports before this Hon`ble Court on monthly basis with respect to the progress in the recovery proceedings stated above.

2. Issue a writ of mandamus or such other writ or direction directing respondents to settle and perfect a data bank with respect to properties belonging to temples under 4th respondent under illegal occupation as specified in Exhibit P1 to P4.

3. Issue a writ of mandamus or such other writ or direction directing respondents 1 to 4 to prepare a data bank of the all the properties belonging to temples under 4th respondent within a time fixed by this Hon`ble Court and publish the same to ensure its accuracy,

4. Issue Writ of mandamus or such other writ or direction directing respondents not to issue or process any further assignments of properties belonging to various temples under 4threspondent without permission from this Hon`ble Court.

5. To declare that all assignments or conferment or occupation of properties belonging to temples under 4th respondent by anyone without the compliance of the legal mandates in the matter as null and void and further that the same do not bind the temple properties and deity.

6. Issue a writ of Mandamus or such other writ or direction directing the respondents to provide all information with respect to the proceedings for the recovery of properties referred in Exhibit P1 to P3 enabling petitioners to partake in the legal process for recovery of properties.

7. To issue a writ of Mandamus or such other writ or direction directing respondents 1 to 4 to recover damages, costs and the like from all the erring officials in delaying the recovery proceedings including those responsible for the issuance of

illegal assignment certificates or the like paving way for encroachments of temple properties,

8. Pass such other writs or directions which this Hon`ble court may find deem fit and proper in the circumstances of the case

AND

9. To award the costs of the proceedings

Dated this 9th day of September 2015.

Petitioners

- 1.
- 2.
- 3.
- 4.

P Sathisan
Counsel for Petitioners

Interim Relief

For the reasons stated in the above Writ petition and affidavit this Hon`ble court may be pleased to stay all further assignments or alienation of temple properties / religious endowments / other endowments of various temples under 4th respondent without the permission of this Hon`ble court till the disposal of this Writ Petition.

Dated this 9th day of September 2015

P Sathisan
Counsel for Petitioners

BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM

W.P. (C) No of 2015

Rajendran K @ Thridandy Swamy : Petitioners
Sri Chaithanya Das Bharathi
Maharaj & Ors

VS.

State of Kerala rep., by : Respondents
Secretary Parliamentary Affairs &
Revenue (Devaswom Department) & ors

AFFIDAVIT

1, Rajendran K, @ ThridandySwamy Sri Chaithanya Das BharathiMaharaj, s
/o C.K VeluKutty aged 62 years, Sri Bhuwanesweri Temple, Karuvankallu,
Karippur P.O, Malappuram District, 673638 , do hereby solemnly affirm and
state as follows:

1. I am the 1stPetitioner in the above writ petition and I am swearing this affidavit on behalf of other petitioners as well. I am conversant with the facts of the case as disclosed from the records.
2. All the averments made in the accompanying Writ Petition are true to the best of my knowledge, information and belief and they may be read as part of this affidavit.
3. Exhibits produced along with the Writ Petition are the true copies of the original documents.
4. I have not filed any petition before seeking similar and identical relief's in respect of the same subject matter.

All the facts stated above are true to the best of my knowledge, information and belief.

Dated this the 9th day of September 2015

DEPONENT

Solemnly affirmed and signed before me by the Deponent, who is personally known to me, on this the 9th day of September 2015 in my office at Ernakulam.

ADVOCATE

Sub:

WRIT PETITION (CIVIL) NO. OF 2015

VS.

STATE OF KERALA REP., BY : Respondents
SECRETARY PARLIAMENTARY AFFAIRS &
REVENUE (DEVASWOM DEPARTMENT) &ORS

**MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA**

SATHISAN (S-253)
COUNSEL FOR THE PETITIONER

(Special Writ Jurisdiction)

W.P. (C) No. _____ of 2015

Rajendran K @ Thridandy Swamy : Petitioners
Sri Chaithanya Das Bharathi
Maharaj & Ors

Vs.

State of Kerala rep., by : Respondents
Secretary Parliamentary Affairs &
Revenue (Devaswom Department) & ors

SL.No.	Particulars	Pages
1	Synopsis	1
2	Memorandum of Writ Petition (Civil)	2-
3	Affidavit	
4	<u>Exhibit -P1:</u> The copy of the press release downloaded from web site	
5	<u>Exhibit -P2 :</u> True copy of the order dated 12.9.2014 issued by the Secretary Parliamentary Affairs and revenue (Devaswom Department	
6	<u>Exhibit -P3:</u> True copy of the order dated 23.5.2015 issued by the Secretary Parliamentary Affairs and revenue (Devaswom Department	
7	<u>Exhibit -P3:</u> True Copy of a few of the information compiled from the information gathered under RTI Act	

Dated this 9th day of September 2015

P Sathisan

Counsel for Petitioners

BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM

W.P. (C) No. of 2015

Rajendran K @ Thridandy Swamy : Petitioners
Sri Chaithanya Das Bharathi
Maharaj & Ors

Vs.

State of Kerala rep., by : **Respondents**
Secretary Parliamentary Affairs and
Revenue (Devaswom Department) & ors

SYNOPSIS

Petitioners are devotees and persons interested in spiritual and religious performance in various temples under 4th respondent as well. This petition is filed on revealed incessant and unabated encroachments into temple properties by private individuals and agencies with the help of Revenue Department and other authorities in the state. **A reading of Exhibit P1, press release of the Minister for Devaswom along with Exhibit P2 & P3 clearly shows the deliberate negligence and inaction by authorities to recover properties which were encroached belong to temples. Exhibit P4 series reveals about a few of such encroachments.** Numerous similar details are also available with the petitioners. The authorities without complying any of the legal provisions assigned the properties of temple illegally. The same are also void. **It is admitted in Exhibit P1 that 9877.2 hectares of land of temples had been encroached upon and hardly 3 hectors were recovered.** Against the inaction, deliberate negligence and connivance in the encroachments by the authorities, this petition is submitted before this Hon'ble Court.

Dated this 9th day of September 2015

P Sathisan
Counsel for Petitioners
