

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

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THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

TUESDAY, THE 1ST DAY OF FEBRUARY 2022 / 12TH MAGHA, 1943

WP(C) NO. 19896 OF 2021

PETITIONER/S:

SUNEESH K.S.
AGED 37 YEARS
S/O. SURENDRAN, KATTUCHALIL HOUSE, KODIKUTHY KARA,
KOKKAYAR MELORAM, PERUVANTHANAM P.O., PIN-685532,
PEERMADE TALUK, IDUKKI DISTRICT, KERALA STATE,
INDIA, REPRESENTED BY HIS POWER OF ATTORNEY HOLDER,
PRASAD P.S., AGED 44 YEARS, S/O. SREEDHARAN,
RESIDING AT PUTHUPPARAMBIL HOUSE, KADAMAKKULAM
KARA, KUPPAKKAYAM P.O., PIN-686 513, PERUVANTHANAM
VILLAGE, PEERMADE TALUK, IDUKKI DISTRICT, KERALA
STATE, INDIA.

BY ADVS.

SRI.ABRAHAM VAKKANAL, SR. ADVOCATE

SRI.PAUL ABRAHAM VAKKANAL

SMT.VINEETHA SUSAN THOMAS

RESPONDENT/S:

- 1 TRAVANCORE DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY NANTHANCOD, KAWDIAR
POST, THIRUVANANTHAPURAM-695 003.
- 2 DEVASWOM COMMISSIONER
TRAVANCORE DEVASWOM BOARD, NANTHANCOD, KAWDIAR
POST, THIRUVANANTHAPURAM-695 003.
- 3 DEPUTY DEVASWOM COMMISSIONER
TRAVANCORE DEVASWOM BOARD, TRAVANCORE DEVASWOM
BOARD BUILDING, KUMBAZHA ROAD, PATHANAMTHITTA, PIN
CODE-689 645.

- 4 ASSISTANT DEVASWOM COMMISSIONER
TRAVANCORE DEVASWOM BOARD, MUNDAKAYAM GROUP,
MUNDAKKAYAM P.O., KOTTAYAM DISTRICT-686513.
- 5 ADMINISTRATIVE OFFICER
VALLIANKAVU DEVI TEMPLE, PALLORKAVU P.O.,
PERUVANTHANAM, IDUKKI-686 513.
- 6 SUNILKUMAR T.G.
MANIKANTAVILASOM, RANNI P.O., PATHANAMTHITTA-689
672.

BY ADVS.
SHRI.G.BIJU, SC, TRAVANCORE DEVASWOM BOARD
D.AJITHKUMAR
K.SATHEESHKUMAR NEDUMANGAD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09.12.2021 AND THE COURT ON 01.02.2022, DELIVERED THE
FOLLOWING:

"C.R"

JUDGMENT

Anil K. Narendran, J.

The petitioner, namely, Suneesh K.S., who is a resident of Kodikuthy in Peerumedu Taluk, is the successful bidder in the auction conducted by the 1st respondent Travancore Devaswom Board for the sale of (i) 'pooja items' and (ii) 'flower garlands' inside Valliyamkavu Devi Temple, Mundakkayam, for the period from 01.04.2021 to 31.03.2022. The auction was conducted pursuant to Ext.R1(a) tender notification dated 20.02.2021 issued by the 2nd respondent Devaswom Commissioner. The auction for sale of pooja articles was confirmed in the name of the petitioner for Rs.33,33,334/- and that for the sale of flower garlands was confirmed for Rs.4,44,444/-. The petitioner, through his power of attorney holder Prasad P.S, who is a resident of Kadamakkulam in Peerumedu Taluk, has filed this writ petition under Article 226 of the Constitution of India seeking a writ of mandamus commanding respondents 1 to 5 not to interfere with the functioning of the petitioner's stall in the premises of Valliyamkavu Devi Temple till orders are passed on the grievances raised by the petitioner in Ext.P9 representation

dated 23.08.2021 submitted before the 3rd respondent Deputy Devaswom Commissioner, Pathanamthitta; Ext.P11 reply dated 09.11.2021 submitted before the 4th respondent Assistant Devaswom Commissioner, Mundakkayam Group; and Ext.P13 reply submitted by the power of attorney holder of the petitioner before the 4th respondent Assistant Devaswom Commissioner, regarding sale of pooja items and flower garlands in the premises of Valliyamkavu Devi Temple. The petitioner has also sought for a writ of mandamus commanding respondents 1 to 5 to stop parallel sale of pooja items and flower garlands by the 6th respondent or his employees in Valliyamkavu Devi Temple, which are auctioned to the petitioner; a declaration that the petitioner being the successful auctioneer is the only person entitled to conduct sale of pooja items and flower garlands in the premises of Valliyamkavu Devi Temple, which is under the control of the 1st respondent Travancore Devaswom Board, as per the agreements. The petitioner has also sought for a declaration that the attempt made by the 5th respondent Administrative Officer, Valliyamkavu Devi Temple to close down the stall of the petitioner without considering his grievances raised and the orders passed is *ab*

initio void, as the same is against the terms of agreements, the principles of natural justice and fair play; a writ of mandamus or any other appropriate writ or direction, permitting the petitioner to remit the balance auction amount, as assessed by respondents 1 to 4, after redressing his grievances in respect of sale of pooja items and flower garlands, in terms of the agreements entered into by the petitioner with the Travancore Devaswom Board, in five equal monthly instalments, in view of the special circumstances due to Covid-19 pandemic restrictions imposed by the State and also due to illegal parallel sale conducted by the 6th respondent in the temple premises, with the connivance of the 5th respondent Administrative Officer; and a writ of mandamus commanding respondents 1 to 5 to issue necessary orders that no other person/party/entity including the 6th respondent or his men or agents will be permitted to conduct any sale of flower garlands or pooja items in the premises of Valliyamkavu Devi Temple.

2. On 23.09.2021 when this writ petition came up for admission the learned Standing Counsel for Travancore Devaswom Board took notice on admission for respondents 1 to

5. Urgent notice on admission by special messenger was ordered to 6th respondent, returnable by 27.09.2021. The learned Standing Counsel for Travancore Devaswom Board was directed to get instructions as to whether the petitioner had already executed an agreement in terms of the tender conditions and if so, placed on record a copy of the same and also copy of the tender conditions.

3. On 28.09.2021 when this writ petition came up for consideration the 6th respondent entered appearance through counsel, who sought time to file counter affidavit. The submission made by the counsel for the 6th respondent that the said respondent is not conducting any unauthorised stall in the temple premises was recorded. The learned Standing Counsel for Travancore Devaswom Board, on instructions, submitted that the petitioner is yet to submit an agreement in stamp paper, as per the tender conditions.

4. Respondents 1 to 5 have filed a counter affidavit dated 04.10.2021 producing therewith Ex.R1(a) tender notification dated 20.02.2021; Ext.R1(b) complaint dated 25.07.2021 submitted by the 5th respondent Administrative Officer to the

Sector Magistrate; and Ext.R1(c) FIR in Crime 615 of 2021 of Peruvanthanam Police Station. The 6th respondent has also filed a counter affidavit dated 12.10.2021.

5. On 12.11.2021 the learned Senior Counsel for the petitioner sought time to file reply affidavit to the counter affidavit filed by the Travancore Devaswom Board. The learned Standing Counsel for the Travancore Devaswom Board submitted that the amount due from the petitioner comes to more than Rs.20 Lakhs. The learned Senior Counsel sought time to get instructions through the instructing counsel.

6. The petitioner has filed a reply affidavit dated 25.10.2021. Along with that reply affidavit, the petitioner has filed I.A.No.1 of 2021 seeking an order directing the respondents to deploy security staff/Police at the temple gate to ensure that no pooja items and flower garlands purchased from outside are permitted to be brought and used for temple worship, as had been insisted during the tenure of the contract of the 6th respondent, which ended on 25.09.2020, as discernible from Ext.P17 order issued by the 2nd respondent Devaswom Commissioner in September, 2020, so as to enable the petitioner

to make payment of the balance auction amount as per the terms of the agreement. The petitioner has also filed I.A.No.2 of 2021 for ordering an investigation by an independent agency like the High Court Vigilance or State Vigilance, by an officer not below the rank of Circle Inspector of Police, and to submit a report before this Court in a sealed cover on the truth of the execution of the agreements entered into between the petitioner and the Travancore Devaswom Board, pursuant to the auction sale for the year 2021-22, and whether there is unauthorised parallel sale by the 6th respondent or his agent during the year 2021-22, in the premises of Valliyamkavu Devi Temple.

7. On 01.11.2021 the petitioner has filed I.A.No.3 of 2021 seeking an order to accept Ext.P21 complaint dated 24.09.2020 made by the 5th respondent Administrative Officer to the Secretary of the Peruvanthanam Grama Panchayat, regarding functioning of stalls outside the temple premises for selling pooja items. On 05.11.2021 when this writ petition came up for consideration, this Court passed the following order;

“From the pleadings and materials on record and also the submissions made by the learned counsel on both sides, this Court finds that the petitioner has defaulted payment of

more than Rs.19 lakhs, as per tender conditions, towards the second and third instalments in the right to sell pooja items and the second instalment in the right to sell flower garlands in Valliyamkavu Devi Temple.

Having considered the submissions made by the learned on both sides, we deem it appropriate to direct the petitioner to pay a sum of Rs.10 lakhs, out of the said defaulted payment, to the 4th respondent-Assistant Devaswom Commission, within a period of two weeks.

No person with criminal antecedents shall be employed in the petitioner's stall and the police clearance certificate of the employees shall be produced before the 4th respondent, forthwith, if not already produced. The petitioner shall also not violate the conditions of Clause 14 of the General Conditions of Ext.R1(a) tender conditions or Covid protocol. In case of any violations, it is for the Administrative Officer to take necessary action."

8. On 30.11.2021 it was reported by the learned Standing Counsel for Travancore Devaswom Board that the peititoner has not chosen to make payment of Rs.10 Lakhs in terms of the order dated 05.11.2021.

9. Heard the learned Senior Counsel for the petitioner, the learned Standing Counsel for Travancore Devaswom Board for respondents 1 to 5 and also the learned counsel for the 6th respondent.

10. The pleadings and materials on record would show that the petitioner is the successful bidder for sale of pooja items and flower garlands in Valliyamkavu Devi Temple, for the period from 01.04.2021 to 31.03.2022. The auction was conducted on 25.03.2021, pursuant to Ext.R1(a) notification dated 20.02.2021 issued by the 2nd respondent Devaswom Commissioner, in respect of various Temples under the jurisdiction of the 3rd respondent Deputy Devaswom Commissioner, Pathanamthitta. The auction was confirmed in the name of the petitioner for an amount of Rs.33,33,334/-, for sale of pooja articles and Rs.4,44,444/-, for sale of flower garlands. As per clause (6) of Ext.R1(a) tender conditions, the petitioner, who is the successful bidder, has to remit 50% of the amount on the date of auction itself and he has to remit the balance instalments within the prescribed time limit, failing which the Board has the right to cancel the bid and to conduct re-auction.

11. As per clause (6) of Ext.R1(a) tender conditions, the petitioner remitted a sum of Rs.16,66,667/-, vide Ext.P1 receipt dated 25.03.2021, in respect of sale of pooja items and a further sum of Rs.2,22,222/-, vide Ext.P1(b) receipt dated 25.03.2021,

in respect of sale of flower garlands, towards 50% of the auction amount. He has also remitted a sum of Rs.10,000/-, vide Ext.P1(a) receipt dated 25.03.2021, as security deposit. In terms of clause (6) of Ext.R1(a) tender conditions the petitioner has to remit the second instalment (25% of the auction amount) in respect of the right to sell pooja items before 30.04.2021 and the 3rd instalment (remaining 25% of the auction amount) before 30.07.2021. In respect of sale of flower garlands, the petitioner has to remit the second instalment (remaining 50% of the auction amount) before 30.04.2021. It is not in dispute that considering the difficulties faced by the traders due to the restrictions imposed by the State in connection with Covid-19 pandemic, the Travancore Devaswom Board extended the time for remittance of the 2nd and 3rd instalment up to 31.08.2021 and 30.09.2021 respectively.

12. The document marked as Ext.P3 is a copy of the Government Order dated 26.04.2021 imposing restrictions to curb the spread of Covid-19. Ext.P4 is a copy of the order dated 07.05.2021 issued by the Travancore Devaswom Board granting extension of time to the traders for remitting the balance auction

amount. Ext.P5 is a copy of the order dated 23.06.2021 issued by the Travancore Devaswom Board laying down guidelines to be followed in the Temples under the Board.

13. As per clause (7) of Ext.R1(a) tender conditions the successful bidder has to execute an agreement in stamp paper, within a period of seven days from the date of confirmation of auction, in the format approved by the Board. In paragraph 3 of the writ petition, it is averred that, after remitting the 1st instalment of the auction amount and security deposit, vide Exts.P1, P1(a) and P1(b) receipts dated 25.03.2021, the petitioner entered into agreements with the 4th respondent Assistant Devaswom Commissioner, Pathanamthitta on 29.03.2021 and the period of contract is one year, i.e., from 01.04.2021 to 31.03.2022. The photograph of the stall in which the petitioner is selling pooja items and flower garlands is marked as Ext.P2.

14. The learned Standing Counsel for Travancore Devaswom Board submitted that, as stated in paragraph 7 of the counter affidavit filed by respondents 1 to 5, after finalisation of the tender proceedings, the successful bidder has to execute a

formal agreement in the prescribed format, for which he has to produce the agreement in stamp paper. The petitioner deliberately evaded from executing the agreements. He has not executed the same till 04.11.2021, the date on which the counter affidavit was filed. Now the attempt of the petitioner is to evade from performing his part of the contract, as per the tender conditions, by not executing the agreements. Taking advantage of such breach, the petitioner is now contending that he is not liable to make payment of the balance amount, as per Ext.R1(a) tender conditions.

15. The learned Senior Counsel for the petitioner would submit that, as stated in paragraph 6 of the writ petition, the petitioner has executed agreements in terms of Ext.R1(a) tender conditions, with the 4th respondent Assistant Devaswom Commissioner, on 29.03.2021. As stated in paragraph 5 of the reply affidavit, in the said agreements it is specifically provided that, in the temple premises only the auctioneer will have the right to sell pooja items and flower garlands and that, in the event of pandemic or any other catastrophes or disasters, pursuant to which entry of devotees is restricted or lock down is

imposed, proportionate deduction/remission will be granted. These conditions were specifically incorporated as Covid-19 situation was continuing and nobody was willing to participate in the tender. In view of such a provision in the agreements executed on 29.03.2021, the petitioner is entitled for remission due to lock down on account on Covid-19 pandemic and also due to parallel sale of pooja items and flower garlands by the 6th respondent. Along with the reply affidavit the petitioner has also placed on record Ext.P15 affidavit sworn to by one Santhosh, S/o.Thankachan, who is stated to be a lottery seller in the premises of Valliyamkavu Devi Temple and Ext.P15(a) affidavit sworn to by T.R.Sajikumar, who is stated to be a worshipper of Valliyamkavu Devi, who alleged to have witnessed the execution of the agreements on 29.03.2021, in the office of the 5th respondent Administrative Officer.

16. It is pertinent to note that, as per clause (7) of Ext.R1(a) tender conditions, the petitioner has to execute an agreement in the prescribed format approved by the Travancore Devaswom Board, which has to be executed in the concerned office, i.e., in the office of the 4th respondent Assistant Devaswom

Commissioner. Going by the averments in paragraph 3 of the writ petition, after the remittance of 50% of the auction amount and security deposit vide Exts.P1, P1(a) and P1(b) receipts dated 25.03.2021, the petitioner had entered into agreements with the 4th respondent, on 29.03.2021. However, in paragraphs 5 and 6 of the reply affidavit, relying on Exts.P15 and P15(a) affidavits, it is averred that, the agreements in terms of Ext.R1(a) tender conditions were executed on 29.03.2021, in stamp papers, in the office of the 5th respondent Administrative Officer.

17. The format of the agreement that has to be entered into between the successful bidder and the concerned Assistant Devaswom Commissioner, as provided under clause (7) of Ext.R1(a) tender conditions, is one approved by the Travancore Devaswom Board. The Assistant Devaswom Commissioner or the Deputy Devaswom Commissioners has absolutely no authority to permit execution of an agreement by a successful bidder, other than in the format approved by the Board. The stand taken by the petitioner in paragraph 5 of the reply affidavit is that, he should be given remission due to lock down on account of Covid-19 pandemic and also due to parallel sale of pooja items and

flower garlands inside the temple premises by the 6th respondent, since a condition to that effect has been incorporated in the agreements alleged to have been executed on 29.03.2021.

18. Ext.R1(a) tender notification is one issued by the 2nd respondent Devaswom Commissioner in respect of all temples under the jurisdiction of the 3rd respondent Deputy Devaswom Commissioner, Pathanamthitta. As provided under clause (7) of Ext.R1(a) tender conditions, successful bidders in respect of other temples under the jurisdiction of the 3rd respondent Deputy Devaswom Commissioner, including successful bidders in temples under Mundakkayam Group, had entered into agreements with the concerned Assistant Devaswom Commissioner. The petitioner could have produced copy of any such agreements in order to substantiate his contention that, in the agreements executed by the successful bidders for the year 2021-22 such a condition for remission due to lock down on account of Covid-19 pandemic or due to any parallel sale of pooja items and flower garlands inside the temple premises was incorporated. Therefore, the contention of the petitioner that he is entitled to remission due to lock down on account of Covid-19 pandemic and due to parallel sale of

pooja items and flower garlands inside the temple premises by the 6th respondent, as per the conditions to that effect incorporated in the agreements alleged to have been executed on 29.03.2021, can only be repelled as untenable, and we do so.

19. Clause (18) of Ext.R1(a) tender conditions provides that, for conducting stall, if a contractor require Devaswom land or building, he has to take possession of that land or building only after the receipt of intimation from the concerned Devaswom Office regarding execution of the agreement, as provided under clause (7). Relying on the aforesaid clause in Ext.R1(a), the learned Senior Counsel for the petitioner would contend that, the fact that the petitioner was permitted to open the stall in the Devaswom property on 01.04.2021 would conclusively prove that he had executed the agreements, as stated in paragraph 6 of the writ petition, on 29.03.2021. The learned Senior Counsel would also rely on clause (20) of Chapter VI, Volume II of the Travancore Devaswom Manual, 2011, which provides that no supplies should be received from the contractors or payments made to them before they furnish security and execute the required agreement.

20. Chapter VI, Volume II of Travancore Devaswom Manual deals with supply of articles, which provides that, supply of articles required in Devaswom should be arranged in the manner set-forth in Chapter VI. Clause (19) of Chapter VI deals with execution of agreements in the office of the concerned Assistant Devaswom Commissioner and that, agreement should be made on stamp paper as per the model appended to Chapter VI. During the course of arguments, the submission made by the learned Standing Counsel for Travancore Devaswom Board is that, on account of the situation prevailing in the State due to Covid-19 pandemic, in some of the temples the concerned Administrative Officers permitted successful bidders to occupy Devaswom land for putting up stalls for sale of pooja items, flower garlands, etc., on 01.04.2021, even before the execution of agreements, as provided under clause (7) of Ext.R1(a) tender conditions.

21. In **Suresan Nair T.S. and others v. Travancore Devaswom Board and others [2021 (6) KHC 837]**, a decision relied on by the learned Standing Counsel for Travancore Devaswom Board, a Division Bench of this Court held that, when

the petitioners therein responded to Ext.P1 tender notification issued by the Travancore Devaswom Board by submitting their respective bids for their respective items, they made their offer and the same was accepted by the Travancore Devaswom Board and they were conferred with the kuthaka/right. Thereupon, they remitted the first instalment of the bid amount as per the terms of Ext.P1 and the contract between the petitioners and the Travancore Devaswom Board is completed. The prescription in clause (7) for execution of formal agreement within seven days from the date of conferring with the kuthaka/right is only for embodying the terms and conditions of the contract already concluded by the acceptance of the bid. Absence of a formal contract cannot lead to an inference that there is no concluded contract when the contract is completed by the acceptance of bid and deposit of the requisite portion of bid amount by the petitioners.

22. In **Suresan Nair T.S.**, relying on the decision of the Apex Court in **Dresser Rand S.A. v. Bindal Agro Chemicals Ltd. [(2006) 1 SCC 751]** the petitioners therein contended that, in the absence of a written agreement between parties,

there is no binding contract. The Division Bench noticed that, in **Dresser Rand S.A.**, the Apex Court was considering the question as to whether a tender document can be construed as arbitration agreement and the Court, after considering the difference between negotiating a bargain and entering into a binding contract held, on the facts of the said case, that unless a purchase order was placed, there would be no agreement between the parties. Everything that took place before such purchase order was placed, would only be a prelude to a contract which cannot be confused with the contract itself. It was further held that a letter of intent is only an intention to enter into a contract in future and it is not binding on the parties and it does not amount to contract. The process of bidding or submission of tenders would result in a contract when a bid or offer is made by a prospective supplier and such bid or offer is accepted. The Division Bench held that, the decision of the Apex Court in **Dresser Rand S.A.** cannot fetch any help to the petitioners, as admittedly, the bids submitted by them were accepted by the TDB and they have remitted the 1st instalment of the premium amount. It is not merely a negotiation of bargain, but acceptance

of petitioners' bids by the Travancore Devaswom Board, giving rise to a binding contract. Therefore, absence of a formal agreement cannot lead to an inference that there is no binding contract between the petitioners and the Travancore Devaswom Board.

23. In **Suresan Nair T.S.**, the Division Bench noticed that, as per Ext.P1 tender notification, once the kuthaka right is received, an agreement in stamp paper as per the approved draft shall be entered into within seven days at the office of the Devaswom concerned. Once the grant of kuthaka is informed and the person who received kuthaka remits the first instalment of the kuthaka, he is bound to scrupulously follow the other conditions in the tender notification and execute the agreement within the stipulated time. Having not done the same, he cannot be permitted to take advantage of avoidance of that obligation and get the fruits of his refusal to honour the obligation. By refusing to enter into an agreement and taking advantage of the same, the petitioners cannot be heard to contend that there is no concluded contract and they are not liable to pay the auction amount. It is trite that, where an obligation is cast on a party and

he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim '*commodum ex injuria sua nemo habere debet*' (no party can take undue advantage of his own wrong). Therefore, the Division Bench held that, the petitioners cannot contend that there is no binding contract between the petitioners and the Travancore Devaswom Board or that the tenders are liable to be cancelled. Their contention that they are not liable to deposit the bid amount and that they are entitled to get back the amount already deposited cannot be sustained.

24. In the instant case, once the petitioner has remitted the first instalment of the auction amount in respect of kuthaka items, vide Exts.P1 and P1(b) receipts dated 25.03.2021, he is bound to scrupulously follow the other conditions of Ext.R1(a) tender conditions and execute the agreements within the stipulated time. In view of the law laid down by the Division Bench of this Court in **Suresan Nair T.S.**, the petitioner cannot be heard to contend that there is no concluded contract and therefore, he is not liable to pay the balance instalments as per Ext.R1(a) tender conditions.

25. The learned Senior Counsel for the petitioner would contend that on account of the closure of the Temple in question due to outbreak of Covid-19 pandemic, the petitioner is entitled for remission, applying the principles of *force majeure*.

26. In **Harikumar G. v. Travancore Devaswom Board and others [ILR 2021 (1) Kerala 1050]**, another decision relied on by the learned Standing Counsel for Travancore Devaswom Board, a Division Bench of this Court was dealing with a case in which extension of licence period for selling pooja items in Ettumanoor Sree Mahadeva Temple was sought for in the background of Covid-19 pandemic. While declining the said prayer, the Division Bench noticed that, even the petitioner has not shown that the supervening events have struck at the root of the contract. In other words, it has not become humanly impossible to perform the contract. Even though for some time in the beginning, it had become more onerous to get returns as expected by him, after lifting the ban in entering of devotees in temple, devotees have resumed visiting the temple and thus the petitioner has started supplying materials as required under the contract. After starting to supply materials, he cannot turn round

and say that the contract has become impossible of performance and frustrated. Paragraphs 8 to 10 of that decision read thus;

"8. Doctrine of frustration or otherwise known as doctrine of impossibility is based on the legal provision for the discharge of a contract, subsequent to its formation, in the event of change of circumstances rendering the contract illegal or physically impossible of performance. *'Impossibilium nulla obligatio est'* is an accepted Latin Maxim meaning that there is no obligation to do impossible things. Similarly, the scope of application of the doctrine of *'lex non cogit ad impossibilia'*, that is, the law does not compel a man to do what he cannot possibly perform, the Roman Maxim *'nemo tenetur ad impossibilia'*, no one is bound to do an impossibility, have no application in the fact situation. Here no one has a case that the first part of Section 56 has any application. The petitioner wanted to bring his case under the second part, saying that due to supervening reasons, that is, introduction of complete lock-down due to the spread of Covid-19 pandemic, it became impossible for him to perform his part of the contract and thus the contract stands frustrated. We have no doubt that on his own showing, it is brought out by the petitioner that the second part of Section 56 also has no application. It is evident that from 17.08.2020 onwards, he could do business. The term of the contract is up to 31.03.2021. If it was an absolute impossibility, he would not have been able to perform the contract and supply items as required under the terms of the contract. Therefore, the petitioner cannot

take shelter under Section 56 of the Contract Act. For the very same reason, his argument that he has suffered a huge loss of Rs.30 lakhs a month also cannot be looked into by the Court.

9. It is also important to consider the effect of impossibility or frustration. When there is frustration, the dissolution of the contract occurs automatically. It does not depend, as happens in rescission of a contract on the ground of repudiation or breach, on the choice of election of either party. It depends on the effect of what has actually happened on the possibility of performing the contract.

10. In **Smt. Sushila Devi and another v. Hari Singh and others [AIR 1971 SC 1756]** the Honourable Supreme Court held that Section 56 of the Contract Act lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties. The impossibility contemplated by Section 56 of the Contract Act is not confined to something which is not humanly possible. If the performance of a contract becomes impracticable or useless having regard to the object and purpose of the parties had in view then it must be held that the performance of the contract has become impossible. But the supervening events should take away the basis of the contract and it should be of such a character that it strikes at the root of the contract. As noticed, here even the petitioner has not shown that the supervening events have struck at the root of the contract. In other words, it has not become humanly impossible to perform the contract. Even though for some time in the beginning, it had become more

onerous to get returns as expected by him, after lifting the ban in entering of devotees in temple, devotees have resumed visiting the temple and thus the petitioner has started supplying materials as required under the contract. After starting to supply materials, he cannot turn round and say that the contract has become impossible of performance and frustrated. He cannot blow hot and cold at the same time". (underline supplied)

27. In **Suresan Nair T.S. [2021 (6) KHC 837]** one of the contentions raised by the petitioners was that, due to the outbreak of Covid-19 pandemic and the turn of events thereby, the contract could not be performed and has become frustrated. The Division Bench held that, when the case of the petitioners is that there is no binding contract, they cannot plead frustration of contract. The Division Bench noticed that the issue regarding frustration of contract was elaborately considered by this Court in **Harikumar G. [ILR 2021 (1) Kerala 1050]**, wherein extension of licence period for selling pooja items in Ettumanoor Sree Mahadeva Temple was sought for in the background of Covid-19 pandemic. The Division Bench further noticed that the lock down and the resultant restriction in entry of devotees to temples on account of Covid-19 pandemic did not cover the entire period of contract. After lifting the lock down and when the temples were

opened for devotees, they could conduct business for the rest of the period of contract. The petitioners were doing business during the previous season also on getting the kuthaka/right. As observed in **Harikumar G.**, in contractual matters, unforeseen eventualities are bound to happen. For the reason that contractors could reap good profit during a season do not bind them to pay any additional amount to the Board. In the said decision, this Court also held that alteration of circumstances does not lead to frustration of contract and that the doctrine of frustration has to be applied narrowly. In **Harikumar G.**, relying on the decision in **Travancore Devaswom Board v. Thanath International [(2004) 13 SCC 44]**, the Division Bench held that, merely because performance had become more onerous is not a ground for non performance or for claiming enhancement of price. Since the petitioners could do business during the rest of the term of the contract on lifting the restrictions, it cannot be said that the contract has become impossible for performance. Frustration of contract happens when the execution of contract is wholly impossible. The supervening events followed by the pandemic have not made the execution of contract wholly

impossible, though it might have made the performance of contract more onerous and difficult. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification to wriggle out of the contractual obligations which the parties had accepted with open eyes.

28. In **State of Haryana v. Jage Ram [(1980) 3 SCC 599]**, relying on the decision of the Constitution Bench in **Har Shankar v. Deputy Excise and Taxation Commissioner [(1975) 1 SCC 737]**, the Apex Court held that, the respondent therein entered into a contract with the State authorities with the full knowledge of conditions which they had to carry out in the conduct of their business, on which they had willingly and voluntarily embarked. The occurrence of a commercial difficulty, inconvenience or hardship in the performance of those conditions, like the sale of liquor being less in summer than in winter, can provide no justification for not complying with the terms of the contract which they had accepted with open eyes. The respondents could not, therefore, invoke the writ jurisdiction of the High Court to avoid the contractual obligations incurred by

them voluntarily.

29. The petitioner, who is the successful bidder in the auction conducted by the Travancore Devaswom Board for the sale of pooja items and flower garlands inside Valliyamkavu Devi Temple, Mundakkayam, for the period from 01.04.2021 to 31.03.2022, cannot be permitted to beat a retreat to his convenience, whenever unfavorable turn of events take place. The occurrence of any commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification to the petitioner to wriggle out of the contractual obligations which he had accepted with open eyes. The supervening events followed by Covid-19 pandemic might have made the performance of contract more onerous, which can provide no justification to the petitioner to wriggle out the contractual obligations under Ext.R1(a) tender conditions, which he had accepted with open eyes, by remitting the first instalment of kuthaka items vide Exts.P1 and P1(b) receipts dated 25.03.2021. In view of the law laid down by the Division Bench in **Suresan Nair [2021 (6) KHC 837]**, when the case of the petitioner is that there is no binding contract, he

cannot plead frustration of contract. The contentions to the contra raised by the petitioner are absolutely untenable.

30. **A.P. Aggarwal v. Government of NCT of Delhi [(2000) 1 SCC 600]**, a decision relied on by the learned Senior Counsel for the petitioner, a Three-Judge Bench of the Apex Court reiterated the law laid down in **Shrilekha Vidyarthi v. State of U.P. [(1991) 1 SCC 212]** that, every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law.

31. In **ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd. [(2004) 3 SCC 553]**, another decision relied on by the learned Senior Counsel for the petitioner, the Apex Court reiterated that, once State or an instrumentality of State is a party to the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India.

32. In **Noble Resources Ltd. v. State of Orissa [(2006) 10 SCC 236]**, another decision relied on by the learned Senior Counsel for the petitioner, the Apex Court reiterated that,

if an action on the part of the State is violative the equality clause contained in Article 14 of the Constitution of India, a writ petition would be maintainable even in the contractual field.

33. In the instant case, the petitioner, who is the successful bidder for sale of pooja items and flower garlands in Valliyamkavu Devi temple, for the year 2021-22, has defaulted payment of the balance auction amount, in violation of Ext.R1(a) tender conditions. On account of the default committed by the petitioner, he was required to pay the balance amount, vide Ext.P10 notice dated 07.09.2021 of the 4th respondent Assistant Devaswom Commissioner, which was followed by the action taken by the 5th respondent Administrative Officer to stop the functioning of the stall, as directed by the 4th respondent Assistant Devaswom Commissioner. The petitioner, who is admittedly a defaulter of Ext.R1(a) tender conditions, cannot contend that the above action of respondents 4 and 5 is in any manner violative of the equality clause contained in Article 14 of the Constitution of India, relying on the law laid down in the decisions referred to supra.

34. By Ext.P10 notice dated 07.09.2021, the 4th

respondent Assistant Devaswom Commissioner, required the petitioner to pay the balance auction amount in respect of sale of pooja articles and flower garlands in Valliyamkavu Devi Temple, for the period from 01.04.2021 to 31.03.2022. On receipt of Ext.P10 notice, the petitioner submitted Ext.P11 reply dated 11.09.2021 to the 4th respondent, wherein the petitioner has stated that he is conducting the stall in Valliyamkavu Devi Temple on the strength of agreements executed with the 4th respondent Assistant Devaswom Commissioner, in stamp papers worth Rs.200/-, and those agreements consist of two additional pages. Since he has not violated the terms of that agreements, he is not liable to pay the amount as demanded in Ext.P10 notice. The document marked as Ext.P13 is a copy of the reply made by the power of attorney holder of the petitioner before the 4th respondent. Ext.P14 is a copy of the application made by the power of attorney holder of the petitioner, under the provisions of the Right to Information Act, 2005. A reading of Exts.P13 and P14 would indicate that, it is the power of attorney holder, who is conducting the stall in question in Valliyamkavu Devi Temple.

35. The learned Standing Counsel for the Travancore

Devaswom Board, on instructions, would submit that the petitioner, who is the successful bidder for sale of pooja items and flower garlands in Valliyamkavu Devi Temple, for the year 2021-22, who is employed in a private company at Kottayam, has transferred that right to a third party, in violation of clause (14) of Ext.R1(a) tender conditions, who is styled as the power of attorney holder of the petitioner.

36. The learned Senior Counsel for the petitioner, after referring to paragraph 14 of the reply affidavit, would contend that there is no violation of clause (14) of Ext.R1(a) tender conditions, since the power of attorney holder is the first cousin of the petitioner. The stall is directly run by the petitioner, by employing two employees, and as such there is no violation of clause (14) of the tender conditions, as alleged. The learned Senior Counsel, as instructed through the learned instructing counsel, would submit that the petitioner, who is employed in a private company at Kottayam, used to involve himself in the sale of pooja items and flower garlands in Valliyamkavu Devi Temple, on holidays.

37. In **Sreekumar V. v. Travancore Devaswom Board**

[2015 (2) KHC 714], a Division Bench of this Court in which one among us [Anil K.Narendran (J)] is a party, directed the Travancore Devaswom Board to incorporate the conditions enumerated in clauses (i) to (xiii) in Para 6 of the order dated 09.02.2015 in W.P.(C)No.3206 of 2014 with necessary modifications in all tender notifications issued by the Board to conduct public auction of the right to open temporary stalls/shops on the Devaswom property of all the temples under the Travancore Devaswom Board, treating it as general guidelines. In that writ petition, this Court was dealing with the irregularities pointed out in the conduct of the public auction of the right to conduct temporary stalls/shops on the Devaswom property of Sree Vallabha Maha Temple, Thiruvalla, during the annual festival season. Clauses (i) to (xiii) in Para 6 of the order dated 09.02.2015 read thus:

“(i) The auction shall be confined to 49 plots identified in the site sketch prepared by the Assistant Engineer, Travancore Devaswom Board, Thiruvalla and produced before this Court;

(ii) The upset price for the plots shall be as mentioned in the statement prepared by the Assistant Engineer,

Travancore Devaswom Board, Thiruvalla and produced before this Court;

(iii) The auction shall be conducted in the presence of the Chief Vigilance Officer of the Board, who shall ensure that the intending bidders are not prevented in any manner by persons with vested interests. The Chief Vigilance Officer shall also seek Police assistance for the smooth conduct of the auction, if found necessary;

(iv) At the time of auction, the bidders shall carry their voter's identity card issued by the Election Commission of India or any other proof of identity recognised by the Government and shall also furnish a self-attested photostat copy of the identity card to the Officer conducting the auction.

(v) The intending bidders shall produce the requisite EMD by way of Demand Draft drawn in their name.

(vi) No bidder shall be permitted to bid for more than one plot. If there are vacant plots after the auction, such plots shall be put to auction on the very next day at the very same time. In the absence of sufficient number of bidders on the second day, more than one plot can be allotted to a single bidder;

(vii) No licensee shall be permitted to put up more than one stall/shop on a single plot;

(viii) No person shall be permitted to conduct any stall/shop in an area other than that shown in the sketch prepared by the Assistant Engineer, Travancore Devaswom Board, Thiruvalla;

(ix) No licensee shall have the right to re-auction/sub-let the plot to a third party and if any such instance comes to the notice of the Board, the Board shall be entitled to cancel such license forthwith and evict the licensee from the plot, by forfeiting the entire license fee. But the Board shall give the licensee a reasonable time to remove his articles;

(x) The licensee should personally conduct the business in the stall/shop put up on the plot taken in auction and he should also carry his proof of identity with him while conducting such business;

(xi) No licensee shall be permitted to occupy the plot allotted to him beyond the period of the license. But it would be open to the Board to give a grace period up to one week, after collecting proportionate license fee, to enable the licensee to remove his articles from the plot or for selling the balance articles;

(xii) No member of the Temple Advisory Committee or their near relations, or the employees of the Travancore Devaswom Board or their near relations shall be entitled to participate in the auction either personally or as a nominee of another;

(xiii) No bidder shall interfere with the conduct of any religious rites, rituals, customs, practises and other ceremonies of the temple. Bidders shall be bound to follow the temple manners and instructions issued by the Board from time to time, failing which he will be summarily evicted after forfeiting the entire license fee."

38. In **K.N. Sreekumar v. Travancore Devaswom**

Board [2015 SCC OnLine Ker 11672] - Judgment dated

27.03.2015 in W.P.(C)No.4941 of 2015 - a Division Bench of this Court in which one among us [Anil K. Narendran, J] is a party, held that, in view of the judgment in **Sreekumar V.**, any public auction of the right to open temporary shops/stalls in the Devaswom ground in front of Ettumanoor Sree Mahadeva Temple and also in the Kovil Padam Road owned by the Devaswom can be conducted only in terms of the general guidelines framed in that judgment.

39. In compliance with the direction contained in the judgment of this Court dated 09.02.2015 in W.P.(C)No.3206 of 2014 the Devaswom Commissioner has issued a circular dated 13.07.2015 stipulating the general guidelines in respect of the right to conduct stalls/shops in Devaswom properties, wherein it is provided that no licensee shall have the right of re-auction/sub-let the plot to third parties and that the licensee should personally conduct business in the stall.

40. The power of attorney executed by the petitioner, which is available in the miscellaneous papers of this writ petition, is one dated 20.09.2021. As per that power of attorney, Prasad P.S. is authorised to file, prosecute or defend cases in

relation to the to the stall conducted in the premises of Valliyamkavu Devi Temple, and also to appear before Government offices, authorities, etc. for obtaining certificates, etc. A reading of the said power of attorney would make it explicitly clear that the said document is one executed for the purpose of filing this writ petition before this Court, which is one filed on 20.09.2021. In the facts and circumstances of the case, as borne out from the pleadings and materials on record, we find considerable force in the contention of respondents 1 to 5, that the petitioner, who is the successful bidder for sale of pooja items and flower garlands in Valliyamkavu Devi Temple, for the year 2021-2022, has transferred that right to a third party, the alleged power of attorney holder, in violation of clause (14) of Ext.R1(a) tender conditions.

41. In the writ petition, it is alleged that, the 6th respondent, who was the successful bidder for sale of pooja items and flower garlands in Valliyamkavu Devi Temple, for the year 2020-21, for a period of six months from 25.09.2020, is conducting sale of pooja items and flower garlands in the temple premises. The 6th respondent has filed counter affidavit, wherein

it is stated that, Ext.P7 photograph produced along with the writ petition was taken while he was conducting sale of pooja items and flower garlands in Valliyamkavu Devi Temple for a period of six months from 25.09.2020. For the current year, i.e., 2021-22, the 6th respondent is the successful bidder for collecting broken coconuts and 'nercha kozhi' in Valliyamkavu Devi Temple. He is also the successful bidder for the upkeep of toilets in the temple premises. He is not conducting any parallel shop for sale of pooja items and flower garlands, as alleged in the writ petition.

42. The learned Senior Counsel for the petitioner would point out Ext.P16 notice dated 08.09.2021 issued by the Secretary of Peruvanthanam Grama Panchayat, whereby the 6th respondent was directed to remove a stall conducted in Ward No.9 of that Grama Panchayat, near Valliyamkavu Devi Temple, without obtaining permission from the Grama Panchayat. Along with the reply affidavit, the petitioner has placed on record Ext.P20 series of photographs of the stall alleged to have been conducted by the 6th respondent, near Valliyamkavu Devi Temple, which was inaugurated during the current year, i.e., 2021-22.

43. If, as a matter of fact, the 6th respondent is conducting

any shop outside the temple premises without obtaining necessary licence from the Peruvanthanam Grama Panchayat, it is for the Secretary of Peruvanthanam Grama Panchayat to take appropriate action against him, in accordance with law. However, the conduct of any such stall outside the temple premises is not a justification to the petitioner to wriggle out the contractual obligations under Ext.R1(a) tender conditions, by defaulting payment of the balance auction amount payable in terms of that tender conditions. Registrar (Judicial) shall send a copy of this judgment to the Secretary of Peruvanthanam Grama Panchayat in the official e-mail id **peruvanthanamgp@yahoo.co.in**, for taking necessary action against the 6th respondent, in accordance with law, in case he is conducting any shop outside the temple premises without obtaining necessary licence from the Grama Panchayat.

44. As evident from Ext.P20 series of photographs, the name of Travancore Devaswom Board and also the name of the temple, i.e., Valliyamkavu Devi Temple are exhibited in the name board of that stall alleged to have been conducted by the 6th respondent near Valliyamkavu Devi Temple and it is also written

in that name board that, it is a Devaswom authorised pooja stall.

45. The traders, who are successful bidders of various kuthaka items in the temples under the management of Travancore Devaswom Board, shall not be permitted to exhibit in front of their stall either the name of Travancore Devaswom Board or the name of the deity or temple. They shall also not be permitted to exhibit their mobile number or telephone number in front of their stall. Similarly, no trader, who is conducting any stall outside the temple premises, after obtaining necessary licence from the concerned Municipality or Grama Panchayat, shall not be permitted to exhibit in front of their stall either the name of Travancore Devaswom Board or the name of the deity or temple.

46. The concerned Assistant Devaswom Commissioner and the Administrative Officer shall take necessary steps to ensure that no trader, who is the successful bidder of any kuthaka item in the temples under the management of Travancore Devaswom Board is exhibiting in front of his stall either the name of Travancore Devaswom Board or the name of the deity or temple. In case, any trader, who is conducting stall

outside the temple premises, after obtaining necessary licence from the concerned Municipality or Grama Panchayat, is exhibiting in front of his stall either the name of Travancore Devaswom Board or the name of the deity or temple, the concerned Assistant Devaswom Commissioner and the Administrative Officer shall bring it to the notice of the Secretary of the concerned Municipality or Grama Panchayat, as the case may be, and also the Station House Officer of the concerned Police Station. On receipt of any such complaint, the Secretary of the concerned Municipality or Grama Panchayat or the Station House Officer of the concerned Police Station shall take necessary action against such a trader, in accordance with law. The Secretary of the 1st respondent Travancore Devaswom Board shall issue a circular, within one month from the date of receipt of a certified copy of this judgment, requiring the concerned Assistant Devaswom Commissioner and the Administrative Officer to take necessary action, in terms of the above directions contained in this judgment.

47. In case, the 6th respondent is conducting the stall seen in Ext.P20 series of photographs, outside the premises of

Valliyamkavu Devi Temple, exhibiting the name of Travancore Devaswom Board and the name of the deity or temple, the 4th respondent Assistant Devaswom Commissioner or the 5th respondent Administrative Officer shall bring it to the notice of the Secretary of Peruvanthanam Grama Panchayat and also the Station House Officer of Peruvanthanam Police Station. On receipt of any such complaint, the Secretary of Peruvanthanam Grama Panchayat and the Station House Officer of Peruvanthanam Police Station shall take necessary action against the 6th respondent, in accordance with law.

48. In **C.S.S. Motor Service v. Madras State [AIR 1953 Madras 279]** a Division Bench of the Madras High Court held that all public streets and roads vest in the State, but that the State holds them as trustee on behalf of the public. The members of the public are entitled as beneficiaries to use them as a matter of right and this right is limited only by the similar rights possessed by every other citizen to use the pathways. The State as trustees on behalf of the public is entitled to impose all such limitations on the character and extent of the user as may be requisite for protecting the rights of the public generally.

49. In **Saghir Ahmad v. State of U.P. [AIR 1954 SC 728]** a Constitution Bench of the Apex Court agreed with the statement of law made by the Division Bench of the Madras High Court in **C.S.S. Motor Service**.

50. In **Sivaprasad v. State of Kerala and others [2020 (6) KHC 373]**, a decision rendered by one among us [Anil K. Narendran, J], this Court held that, the primary object of building roads is to facilitate people to travel from one point to another and carriage of goods. Footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public streets. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements. Removal of encroachments on the footpaths or pavements over which the public has the right of passage or

access cannot be regarded as unreasonable, unfair or unjust. The State, being the principal protector of the rights of its citizens, keeping in view the doctrine of public trust, should not permit any encroachments on the footpaths or pavements. Nobody has got a right to erect any structures on roads. The State is not an exception.

51. It is pertinent to note that, by the order dated 18.01.2013 in SLP(Civil)No.8519 of 2006 **[Union of India v. State of Gujarat and others]**, the Apex Court issued a general direction to the effect that, from the date of that order the Government of Kerala shall not grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places. The Apex Court made it clear that the said order shall not apply to installation of high-mast lights, street lights or construction relating to electrification, traffic, toll or for development and beautification of streets, highways, roads, etc., and relating to public utility and facilities. The above order was made applicable to all other States and Union Territories and the concerned Chief Secretary/Administrator is directed to ensure compliance of that

order.

52. The order of the Apex Court dated 18.01.2013 in I.A.No.10 of 2012 in SLP(Civil)No.8519 of 2006 was in relation to the permission granted by the State of Kerala, by an order dated 07.09.2011, for installation of statue of late Shri.N.Sundaran Nadar, Ex-Deputy Speaker of Kerala Legislative Assembly near to Neyyantinkkara-Poovar Road in the curve turning to KSRTC bus stand, Neyyatinkkara in Kanyakumari National Highway. By the order dated 05.07.2013 in SLP(Civil) No.8519 of 2006, the Apex Court directed the States and Union Territories to state on affidavit the position with regard to unauthorised structures including unauthorised religious structures on public roads, pavements, sideways and other public utility places as existing on 30.06.2013 in their respective States and the steps taken up to 30.06.2013 for removal of such unauthorised structures. In the said order, the Apex Court noticed the submission of the learned counsel for the States of Madhya Pradesh, Kerala, Punjab and Rajasthan that they have already filed their affidavits. By the order dated 05.07.2013, the Apex Court directed the States of Madhya Pradesh, Kerala, Punjab and Rajasthan to file fresh

affidavits indicating the position as on 30.06.2013.

53. By the order dated 31.01.2018 in SLP(Civil) No.8519 of 2006 and connected cases, the Apex Court ordered that the implementation of its orders should be supervised by the concerned High Courts. Consequently, the Apex Court remitted the matters to the respective High Courts for ensuring implementation of orders in an effective manner. While ordering transmission of concerned records to the respective High Courts, the Apex Court ordered that, the interim orders wherever passed shall continue, until the matters are considered by the High Courts. In case any clarification is required, it would be open to the parties to approach the Apex Court. The High Court will have the jurisdiction to proceed in the contempt of any of the orders passed by the Apex Court.

54. Once roads are constructed as per the required standards, it has to be maintained as such without any encroachment on the right of way or on the pedestrian facilities provided as per such standards. Footpaths are not intended for putting up stalls, shops, etc. or for stocking articles for trade or for display of goods by traders, in front of their shops or

establishments, by causing obstructions to free movement of pedestrians. No person can be permitted to encroach footpath or right of way of public roads, in connection with any such activities by erecting any temporary stalls, structures, etc. on the right of way or on the pedestrian facilities, forcing pedestrians including those with disabilities and reduced mobility to walk in unsafe circumstances. The State holds public roads as a trustee on behalf of the public. By permitting encroachments on public roads by way of temporary structures on the right of way or on the pavements or on the pedestrian facilities provided on such roads, on political considerations or otherwise, the State Government or the concerned Local Self Government Institution is committing breach of trust. Therefore, no Local Self Government Institution shall grant licence to a trader to erect stall on the right of way of public roads or on the pedestrian facilities, forcing pedestrians including those with disabilities and reduced mobility to walk in unsafe circumstances. Stern action shall be taken against the traders who erect stalls on the right of way of public roads or on the pedestrian facilities.

55. As per clause (8) of Ext.R1(a) tender conditions, the

Travancore Devaswom Board has the right to cancel the bid of successful bidders who failed to remit the entire amount within the time stipulated by the Board and to conduct re-auction. In which event, the original bidder will be responsible for the loss, if any, sustained by the Board. As per clause (10) of the tender conditions, the successful bidder will be liable to pay 18% interest for belated remittance of instalments. In case of default in remitting the said amount, i.e., defaulted instalments together with 18% interest, the Board will have the right to initiate appropriate legal proceedings against the bidder for recovering the loss caused to it. As per clause (12) of the tender conditions, in case the bidder has defaulted payment of bid amount in any manner, which has resulted in the Board sustaining loss, the Board shall have the right to proceed against the movable and immovable properties of the bidder for recovering the said loss.

56. In the instant case, admittedly, the petitioner has defaulted payment of instalments in respect of the kuthaka items, in violation of Ext.R1(a) tender conditions. As per clause (10) of the tender conditions, the petitioner is liable to pay 18% interest for belated remittance of instalments. In view of the

provisions under clause (12) of the tender conditions, since the petitioner has defaulted payment of the balance auction amount, which has resulted in the Board sustaining loss, the Board has the right to proceed against his movable and immovable properties for recovering the said loss. It is for the competent among respondents 3 and 4 to initiate recovery proceedings against the petitioner, in accordance with law, since he has defaulted payment of balance instalments towards auction amount in respect of the right to sell pooja items and flower garlands in Valliyamkavu Devi Temple. Necessary steps in this regard shall be taken within two weeks from the date of receipt of a certified copy of this judgment.

57. 'Deva' means God and 'swom' means ownership in Sanskrit and the term 'Devaswom' denotes the property of God in common parlance. [see: **Prayar Gopalakrishnan and another v. State of Kerala and others - 2018 (1) KHC 536**]

58. In **A.A. Gopalakrishnan v. Cochin Devaswom Board [(2007) 7 SCC 482]** a Three-Judge Bench of the Apex Court held that the properties of deities, temples and Devaswom Boards are required to be protected and safeguarded by their

trustees/archakas/shebaites/employees. 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.

59. In **Travancore Devaswom Board v. Mohanan Nair [2013 (3) KLT 132]** a Division Bench of this Court noticed that in **A.A. Gopalakrishnan [(2007) 7 SCC 482]** the Apex Court emphasised that it is the duty of the courts to protect and safeguard the interest and properties of the religious and charitable institutions. The relevant principles under the Hindu law will show that the Deity is always treated similar to that of a

minor and there are some points of similarity between a minor and a Hindu idol. The High Court therefore is the guardian of the Deity and apart from the jurisdiction under Section 103 of the Land Reforms Act, 1957 viz. the powers of revision, the High Court is having inherent jurisdiction and the doctrine of parents patriae will also apply in exercising the jurisdiction. Therefore, when a complaint has been raised by the Temple Advisory Committee, which was formed by the devotees of the Temple, about the loss of properties of the Temple itself, the truth of the same can be gone into by the High Court in these proceedings.

60. In **Mrinalini Padhi v. Union of India [2018 SCC OnLine SC 667]** - order dated 05.07.2018 in W.P.(C)No.649 of 2018 - the Apex Court noticed that the issue of difficulties faced by the visitors, exploitative practices, deficiencies in the management, maintenance of hygiene, proper utilisation of offerings and protection of assets may require consideration with regard to all Shrines throughout the India, irrespective of religion practiced in such shrines. It cannot be disputed that this aspect is covered by List III Item 28 of the Seventh Schedule to the Constitution of India and there is need to look into this aspect by

the Central Government, apart from State Governments. Section 92 of the Code of Civil Procedure, 1908 permits a court also to issue direction for making a scheme or making an arrangement for any charitable or religious institution. Accordingly, the Apex Court directed that, if any devotee moves the jurisdictional District Judge throughout the India with any grievance on the above aspect, the District Judge may either himself/herself or by assigning the issue/ matter to any other court under his/her jurisdiction examine above aspects and if necessary send a report to the High Court. The High Court will consider these aspects in public interest, in accordance with law, and issue such judicial directions as becomes necessary having regard to individual fact situation.

61. In **Nandakumar v. District Collector and others [2018 (2) KHC 58]** a Division Bench of this Court noticed that the legal position has been made clear by the Apex Court as to the role to be played by the High Court in exercising the 'parens patriae' jurisdiction in **Gopalakrishnan v. Cochin Devaswom Board [(2007) 7 SCC 482]**. The said decision was referred to and relied on by a Division Bench of this Court in **Travancore**

Devaswom Board v. Mohanan Nair [2013 (3) KLT 132]. In the said circumstances, the properties of the Devaswom, if at all encroached by anybody and if any assignment/conveyance has been effected without involvement of the Devaswom, securing 'pattayam' or such other deeds, the same cannot confer any right upon the parties concerned, unless the title so derived is clear in all respects. There cannot be any dispute that the remedy to retrieve such property belonging to the Devaswom is by resorting to the course stipulated in the Kerala Land Conservancy Act, 1957.

62. In **A.A. Gopalakrishnan v. Secretary, Cochin Devaswom Board [2018 (3) KHC 549]** a Division Bench of this Court found that the task undertaken by the complainant to ensure that the property of the Devaswom is protected and preserved has ultimately brought out the plain truth that the said property was sought to be appropriated by strangers and that the property in Sy.No.1042/2 has been successfully retrieved by the Devaswom, based on the intervention made by this Court and also by the Apex Court [A.A. Gopalakrishnan - (2007) 7 SCC 482]. Proceedings have to be taken to a logical conclusion in

respect of the land in Sy.No. 1043 as well. This is more so since in view of the 'parens patriae' jurisdiction being entrusted with the Court in this regard and there is a duty cast upon the Court to take every step to ensure that the property of the deity is protected.

63. The properties of deities and temples are required to be protected and safeguarded from usurpation or encroachment in any manner. Persons entrusted with the duty to manage such properties should be vigilant to prevent such usurpation or encroachment. When such usurpation or encroachment 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 officers concerned and also the 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 usurpation or encroachment, wrongful claims or misappropriation. Therefore, the concerned Assistant Devaswom Commissioner and the Administrative Officer shall take stern action against those who have defaulted payment of instalments

in respect of the kuthaka items, in violation of the tender conditions, if found necessary, after seeking police assistance. If any such request is received, it is the duty of the concerned Station House Officer to render necessary assistance to the concerned Assistant Devaswom Commissioner or the Administrative Officer, in order to protect and safeguard the properties of deities and temples from usurpation or encroachment in any manner. Proceedings under clause (23) of Ext.R1(a) tender conditions shall also be initiated against such defaulters, for black-listing. The Secretary of the 1st respondent Travancore Devaswom Board shall issue a circular, within one month from the date of receipt of a certified copy of this judgment, requiring the concerned Assistant Devaswom Commissioner and the Administrative Officer to take stern action against those who have defaulted payment of instalments in respect of the kuthaka items, in violation of the tender conditions.

64. Going by the averments in paragraph 12 of the counter affidavit filed by respondents 1 to 5, on receipt of Ext.P10 notice dated 07.09.2021 of the 4th respondent Assistant

Devaswom Commissioner, the petitioner submitted Ext.P11 reply dated 11.09.2021. The 4th respondent directed the 5th respondent Administrative Officer not to permit the petitioner to conduct sale of pooja items and flower garlands in Valliyamkavu Devi Temple, without remitting the balance instalments. Accordingly on 14.09.2021, the 5th respondent stopped the functioning of the stall, after preparing mahazar, in the presence of witnesses. On that day evening, at 4.45 pm, the staff of the petitioner attempted to manhandle the temple employees and forcefully opened the stall. On 15.09.2021, the 5th respondent submitted a complaint before Peruvanthanam Police Station and the Police has registered Crime No.615 of 2021, a copy of which is placed on record as Ext.R1(c) along with the counter affidavit.

65. Though the above incident had occurred on 14.09.2021 and the Police has registered Crime No.615 of 2021 of Peruvanthanam Police Station, as evidenced by Ext.R1(c) First Information Report for manhandling the temple employees and forcefully opening the stall, the averment made in paragraph 16 of the writ petition is to the effect that, on 14.09.2021, the 5th respondent Administrative Officer along with his men and in the

presence of a Police Officer, who was on duty at the temple, forcefully attempted to shut down the stall of the petitioner. The petitioner has produced Exts.P12 series of photographs. It is averred in the writ petition that the petitioner continues to run the stall and the threat of illegal eviction still continues. The fact that the 5th respondent on 15.09.2021 stopped the functioning of the stall after preparing a mahazar, in the presence of witnesses, and thereafter the petitioner forcefully opened the stall after allegedly attempting to manhandle the temple employees, is not disclosed in the writ petition.

66. In paragraph 26 of the reply affidavit, the petitioner has stated that, since the stall was not sealed by the 5th respondent on 14.09.2021, which is the usual practice for closing down the stall, and since the attempt to close down the stall of the petitioner was made without any lawful orders of the competent authority, the petitioner was able to open the stall on next day. In the reply affidavit, the petitioner has raised a contention that, at the time of closing the stall the presence of the 4th respondent Assistant Devaswom Commissioner is mandatory, who alone can seal the property.

67. We find absolutely no merit in the aforesaid contention raised by the petitioner. The stall in question is admittedly within the temple premises. Despite the receipt of Ext.P10 notice issued by the 4th respondent Assistant Devaswom Commissioner, the petitioner has not chosen to pay the defaulted instalments. Therefore, as instructed by the 4th respondent, the 5th respondent Administrative Officer closed the stall. Even after the order of this Court dated 05.11.2021, the petitioner has not chosen to make any payment towards the defaulted instalments. Since the stall in which sale of pooja items and flower garlands is being conducted is situated in the premises of Valliyamkavu Devi Temple, and since the petitioner has defaulted payment of the balance instalments, the 5th respondent Administrative Officer shall seal the stall in question, immediately on receipt of a copy of this judgment, for which necessary assistance and protection shall be rendered by the Station House Officer, Peruvanthanam Police Station. Registrar (Judicial) shall send a copy of this judgment to the Station House Officer, Peruvanthanam Police Station, in his official e-mail id **shopvnmopsidk.pol@kerala.gov.in**, for necessary action. The Station House Officer shall also take

necessary action, in accordance with law, in Crime No.615 of 2021 registered on 15.09.2019, based on the complaint made by the 5th respondent Administrative Officer.

68. In paragraph 14 of the counter affidavit filed by respondents 1 to 5, it is alleged that, the power of attorney of the petitioner namely, Prasad P.S, is a person having criminal antecedents and the staff in the stall did not produce Police Clearance Certificate, in spite of the direction from the Sub Inspector of Police, Peruvanthanam Police Station. In the reply affidavit, which is one sworn to by the power of attorney of the petitioner, it is averred that, he is not involved in any criminal case. Insofar as the Police Clearance Certificate of the staff is concerned, the same was directed to be submitted only after the incident on 14.09.2021, and there was no such requirement earlier. The staff has already applied for Police Clearance Certificate online.

69. By the order dated 05.11.2021, this Court has made it clear that no person with criminal antecedents shall be employed in the petitioner's stall and Police Clearance Certificate of the employees shall be produced before the 4th respondent

Assistance Devaswom Commissioner forthwith, if not already produced. It was also ordered that the petitioner shall not violate the condition in clause (14) of the General conditions of Ext.R1(a) tender conditions or Covid protocol. In case of any violations, it is for the 5th respondent Administrative Officer to take necessary action.

70. No person with criminal antecedents or persons who have not obtained Police Clearance Certificate shall be permitted in any stall in the premises of the temples under the management of the 1st respondent Travancore Devaswom Board. The concerned Assistant Devaswom Commissioner and the Administrative Officer shall take stern action against the bidders of kuthaka items, who have not obtained Police Clearance Certificate, or who are employing persons without Police Clearance Certificate in their stalls in temple premises. The Secretary of the 1st respondent Travancore Devaswom Board shall issue a circular, within one month from the date of receipt of a certified copy of this judgment, requiring the concerned Assistant Devaswom Commissioner and the Administrative Officer to take stern action against those bidders who are violating the aforesaid

condition.

71. The 3rd respondent Deputy Devaswom Commissioner and the 4th respondent Assistant Devaswom Commissioner shall make alternate arrangements for the sale of pooja items and flower garlands in the premises of Valliyamkavu Devi Temple, for the period till 31.04.2022, in accordance with law.

72. In the above circumstances, the petitioner is not entitled to any of the reliefs sought for in this writ petition. The writ petition fails and the same is accordingly dismissed, subject to the directions issued hereinbefore, against the 1st respondent Travancore Devaswom Board, the 3rd respondent Deputy Devaswom Commissioner, the 4th respondent Assistant Devaswom Commissioner, the 5th respondent Administrative Officer, the Secretary of Peruvanthanam Grama Panchayat and the Station House Officer, Peruvanthanam.

No order as to costs.

Sd/-
ANIL K. NARENDRAN,
JUDGE

sd/-
P.G. AJITHKUMAR,
JUDGE

APPENDIX OF WP(C) 19896/2021

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE RECEIPT NO.445613 DATED 25.3.2021 ISSUED BY THE TRAVANCORE DEVASWOM BOARD TO THE PETITIONER.
- Exhibit P1(a) A TRUE COPY OF THE RECEIPT NO.445614 DATED 25.3.2021 ISSUED BY THE TRAVANCORE DEVASWOM BOARD TO THE PETITIONER.
- Exhibit P1(b) A TRUE COPY OF THE RECEIPT NO.445615 DATED 25.3.2021 ISSUED BY THE TRAVANCORE DEVASWOM BOARD TO THE PETITIONER.
- Exhibit P2 A TRUE COPY PHOTOGRAPH OF THE STALL SET UP BY THE PETITIONER.
- Exhibit P3 A TRUE COPY THE GO(RT) NO.383/2021/DMD DATED 26.4.2021 ISSUED BY THE DISASTER MANAGEMENT DEPARTMENT.
- Exhibit P4 A TRUE COPY OF THE ORDER NO.ROC.459/21/NS DATED 7.5.2021 ISSUED BY THE SECRETARY, TRAVANCORE DEVASWOM BOARD.
- Exhibit P5 A TRUE COPY THE ORDER DATED 23.6.2021 ISSUED BY THE SECRETARY, TRAVANCORE DEVASWOM BOARD.
- Exhibit P6 A TRUE COPY OF THE PHOTOGRAPH OF THE STALL OF 6TH RESPONDENT NEAR TO TEMPLE ENTRANCE, DATED NIL.
- Exhibit P7 A TRUE COPY OF THE PHOTOGRAPH SHOWING THE DESK AND STAND SET UP BY 6TH RESPONDENT NEAR TO THE 5TH RESPONDENT'S OFFICE, DATED NIL.
- Exhibit P8 A TRUE COPY OF THE TYPED COPY OF THE COMPLAINT DATED 26.7.2021 GIVEN TO 5TH RESPONDENT.
- Exhibit P8(a) A TRUE COPY OF POSTAL RECEIPT DATED 26.7.2021.

- Exhibit P9 A TRUE COPY OF THE TYPED COPY OF THE COMPLAINT SUBMITTED BEFORE THE 3RD RESPONDENT DATED 23.8.2021.
- Exhibit P9(a) A TRUE COPY OF THE POSTAL RECEIPT DATED 23.8.2021.
- Exhibit P10 A TRUE COPY OF THE NOTICE DATED 7.9.2021 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.
- Exhibit P11 A TRUE COPY OF THE TYPED COPY OF THE REPLY DATED 11.9.2021 SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT.
- Exhibit P11(a) A TRUE COPY OF THE POSTAL RECEIPT DATED 11.9.2021.
- Exhibit P11(b) A TRUE COPY OF THE COMPLAINT FILED BY DEVOTEES DATED NIL.
- Exhibit P11(c) A TRUE COPY OF THE POSTAL RECEIPT DATED 2.8.2021.
- Exhibit P11(d) A TRUE COPY OF THE TYPED COPY OF THE TEXT OF THE COMPLAINT EXT.P11(B) FILED BY DEVOTEES DATED NIL.
- Exhibit P11(e) A TRUE COPY OF THE COMPLAINT FILED BY SMT. RAJAMMA KANDANKONNI TO THE DIRECTOR GENERAL OF POLICE.
- Exhibit P11(f) A TRUE COPY OF THE POSTAL RECEIPT DATED 27.4.2021.
- Exhibit P11(g) A TRUE COPY OF THE RELEVANT PORTION OF THE E-NEWSPAPER-EPAPER MANGALAM.COM DATED 20.4.2021.
- Exhibit P12 A TRUE COPY OF THE PHOTOGRAPH EVIDENCING THE FORCEFUL ATTEMPT MADE TO CLOSE THE STALL DATED NIL.
- Exhibit P12(a) A TRUE COPY OF THE PHOTOGRAPH EVIDENCING PRESENCE OF THE ADMINISTRATIVE OFFICER (R5) AT THE PLACE OF OCCURRENCE DATED NIL.

- Exhibit P12 (b) A TRUE COPY OF THE PHOTOGRAPH EVIDENCING PRESENCE OF ADMINISTRATIVE OFFICER & A POLICE OFFICER, AT THE PLACE OF OCCURRENCE, DATED NIL.
- Exhibit P13 A TRUE COPY OF THE REPLY SUBMITTED BY THE POA OF THE PETITIONER TO THE ASSISTANT DEVASWOM COMMISSIONER (R4) DATED NIL.
- Exhibit P13(a) A TRUE COPY OF THE POSTAL RECEIPT DATED 16.9.2021.
- Exhibit P14 A TRUE COPY OF THE RTI REQUEST DATED 16.9.2021 SUBMITTED BY THE POA OF THE PETITIONER TO THE 4TH RESPONDENT-ASSISTANT DEVASWOM COMMISSIONER, MUNDAKAYAM.
- Exhibit P15 TRUE COPY OF THE AFFIDAVIT OF SANTHOSH DATED 12/10/2021.
- Exhibit P15(a) TRUE COPY OF THE AFFIDAVIT OF T.R.SAJIKUMAR DATED 18/10/2021.
- Exhibit P16 TRUE COPY OF THE NOTICE DATED 08/09/2021 ISSUED BY THE PERUVANTHANAM GRAM PANCHAYAT TO R6 TO DEMOLISH HIS UNAUTHORIZED STALL NEAR VALLIYAMKAVU TEMPLE.
- Exhibit P16(a) TRUE COPY OF THE PHOTOGRAPH OF THE UNAUTHORIZED STALL CONDUCTED BY R6 IN FRONT OF TEMPLE ENTRANCE UPLOADED BY HIM IN HIS FACEBOOK (FB) PAGE.
- Exhibit P16(b) TRUE COPY OF THE FACING PAGE OF R6'S FB ACCOUNT.
- Exhibit P17 TRUE COPY OF THE ORDER ISSUED IN SEPTEMBER, 2020 OF THE DEVESWOM COMMISSIONER.
- Exhibit P18 TRUE COPY OF THE RTI REQUEST DATED 18/10/2021 SENT BY THE POWER OF ATTORNEY HOLDER TO PERUVANTHANAM PANCHAYAT.
- Exhibit P19 TRUE COPY OF THE CIRCULAR ISSUED BY THE DEVASWOM BOARD DATED 19/07/2021.

Exhibit P20 TRUE COPY OF THE PHOTOGRAPH OF THE STALL SET UP BY SHRI.SUNIL KUMAR (R6) DURING HIS AUCTION PERIOD

Exhibit P20(a) TRUE COPY OF THE PHOTOGRAPH OF THE STALL SET UP BY SHRI.SUNIL KUMAR (R6) DURING HIS AUCTION PERIOD

Exhibit P20(b) TRUE COPY OF THE PHOTOGRAPH OF THE INAUGURATION OF THE STALL SET UP BY SHRI.SUNIL KUMAR (R6) DURING HIS AUCTION PERIOD

EXHIBIT P21 TRUE COPY OF THE LETTER DTD. 24.09.2020 ISSUED BY ADMINISTRATIVE OFFICER OF VALLIYAMKAVU DEVASWOM TO THE SECRETARY OF PERUVANTHANAM PANCHAYATH RECEIVED UNDER THE RTI ACT.

RESPONDENTS' EXHIBITS:

EXHIBIT-R1 (a) TRUE COPY OF TENDER NOTIFICATION DATED 20.02.2021 FOR THE AUCTION OF THE RIGHT TO SELL POOJA ARTICLES IN THE TEMPLES UNDER DEPUTY DEVASWOM COMMISSIONER, PATHANAMTHITTA DURING 2021-2022.

EXHIBIT-R1 (b) TRUE COPY OF COMPLAINT DATED 25.07.2021 SUBMITTED BY THE 5TH RESPONDENT TO THE SECTORAL MAGISTRATE.

EXHIBIT-R1 (c) TRUE COPY OF F.I.R IN CRIME NO.615/2021 OF PERUVANTHANAM POLICE STATION.