

A CRITIQUE ON SHRI PADMANABHASWAMY TEMPLE ISSUE: SRI MARTHANDA VARMA V. STATE OF KERALA

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ABSTRACT

The crux of the case is to free the institution of temples from the government control. Reversing the Kerala High Court judgement, Supreme Court upheld the rights of the royal family of Travancore to manage the property of the deity at Shree Padmanabhaswamy temple. This case discusses the customary law on shebait rights and also it considered the question that whether the Royal family will continue to have any authority over the temple. The aim of the paper is to go through the legal interpretation of Travancore Cochin Hindu Religious Act, 1950 (also referred to as TC Act) and the Articles 25, 26, 363, 366(22) of the Indian Constitution. It will analyse the term 'Ruler' in accordance with the Kerala High Court and the Supreme Court and how they differ from each other. Further, the 26th Amendment in the Indian Constitution is examined which effectively abolishes all the royal titles and to outlook whether it made any difference to their relationship with the temple. The Supreme Court also accepted that the temple is a public temple. Historical background of the Travancore Royal family and the agreement of Accession signed by Maharaja Chitra Thirunal are highlighted. The High court's decision on the writ petition filed and how the Supreme Court dissented this opinion is scrutinized. Functioning of two committees which were said to be constituted by the Supreme Court is being given light on.

Keywords: Shebait, Constitution, Accession, Royal Family, Customary Law, Padmanabhaswamy temple, Travancore, Cochin, Kerala, TC Act.

INTRODUCTION

It all started with the eviction of a licensee from the premises belonging to the Padmanabhaswamy temple by an executive officer in 2009. The tenant challenged his authority through writ of quo warranto on the ground that his appointment as an executive officer was itself illegal and the person who appointed him lacked the authority under law. It also stated that the Royal family does not fall within the definition of Ruler for the purpose of Travancore Cochin Hindu Religious Act, 1950. According to him, post the 26th Constitutional Amendment of 1971, Royal titles have been abolished and the concept of Ruler effectively became infructuous and redundant.¹ And therefore, any power or privilege enjoyed by the Travancore Royal family with respect to the Padmanabhaswamy temple came to an end after the death of Chitra Thirunal on signatory to the covenant between Travancore princely state and the Indian Union. High court did not rule in favour of the Royal family and held the management of temple to vest in hands of state government. But, pending the disposal of the entire matter, the Supreme Court on July 13, 2020 reversed the High Court judgement as it was patently erroneous and incorrect.

HISTORICAL BACKGROUND

The antiquity of the Padmanabhaswamy temple is not precisely known. It has been associated to the political history of Travancore, rightly after Marthanda Varma, the founder of modern Travancore, put down his sword before the deity in a religious act by dedicating his kingdom, assuming its management as the vassal of Shree Padmanabha. Numerous temples which were controlled by the rulers of Travancore and Cochin were subsequently under the control of State run Devaswom boards after the two princely states merged as Travancore-Cochin State. In an agreement of Accession signed by Maharaja Chitra Thirunal during the integration of the princely states with Union of India, with government of India also being a party to the agreement, it was agreed that the Padmanabhaswamy temple alone vested in trust in the ruler of Travancore. After the reorganisation of the state, this condition was incorporated in the Travancore-Cochin Hindu Religious Act, 1950, which is a State law governing the administration of temples. After the death of Chitra Thirunal in 1991, his brother Marthanda Varma retained the control and management of the temple through an executive officer which

was challenged by many. In 2010, he approached High Court with a writ petition seeking to transfer all suits from various courts to the Kerala High Court. The issue considered by the High Court was whether the Royal family will continue to have any authority over the temple and also whether the 26th Amendment made any difference to their relationship with the temple.

HIGH COURT PERSPECTIVE

High Court on 31 January, 2011 held that any privilege or any position enjoyed by the Ruler of Travancore who originally signed the covenant in May 1949 on behalf of the princely states of Travancore and Cochin on one hand and Indian Union over the other, ended with his demise in 1991. It said that the status of Ruler is not heritable and cannot be acquired by succession. In any case Royal family does not fall within the description of 'Ruler' as defined under Article 366(22)ⁱⁱ of the Indian Constitution and that there is no concept of Ruler, post the abolition of privy purses in 1971. Everywhere in the TC Act with respect to Padmanabhaswamy temple, the word 'Ruler' has been used but there is no provision to vest the temple in hands of next senior member after the death of Ruler of Travancore.

Now the question is to see whether the use of the word 'Ruler' in TC Act was with reference to an individual or office. If it is with reference to an individual, then it ends with signatory of covenant in 1949. But if it is with reference to an office, then the successor gets rights as well. Kerala High Court passed detailed directions facilitating the takeover of the temple's assets and management by the state government through a trust and further directed in opening the vaults of the temple which happened to be sacred. It was also believed that any unlocking of the vaults will lead to misfortune, especially vault B which was deeply rooted to god Padmanabha. If vault B is to be opened, then it should be done after conducting the traditional Deva Prashnam. The articles in each of the vaults was to be inventoried and put out for public display in museum on a payment basis so that people can visit the temple to look at that, on payment of the fee. The Royal family went to Supreme Court in 2011 and stay was granted.

SUPREME COURT JUDGEMENT

Supreme Court set aside the judgement of High Court and accepted that the term 'Ruler' under Article 366(22) of the Constitution is not sufficient to decide the claim of successors to the management of the temple, but that the matter has to be looked by assessing the context in which it has been used in the covenant and TC Act. Justices U.U Lalit and Indu Malhotra held that the Shebaitship (right to manage the financial affairs of the deity) of temple held by the Royal family will not be affected, as it is like any other heritable property and will devolve according customs and usages even after the death of the last ruler. Shebaitship is not connected with the official status of person signing the covenant. Office of shebait is linked with proprietary right as it has elements of duties and personal interest blended together. The basis of the verdict given by the Supreme Court was that the law of escheat does not apply in this case as only because of the death of a former ruler does not entitle a state government to set up a trust and takeover the management and asset of the temple. This verdict was accepted by the Devaswom Minister also.

To answer the question of end of privy purses by a 26th constitutional amendment, 1971, Supreme Court viewed that the private property of the ruler would devolve under a normal succession as per the custom and usages and this Amendment did not affect the administration of the temple. Court ordered the inventorisation of vaults, digitization of antiques and asked the state government to meet the expenses of the temple. It asked the member of the royal family submit an affidavit which will be binding on them as well as their successors, if they agree to the verdict.

Supreme Court agreed to the fact that the temple is a public temple and also it directed to set up an administrative committee with the Thiruvananthapuram District judge as the chairperson in order to facilitate a transparent administration in the future. Others member of this committee would include the nominee of the trustee (i.e. the royal family), the chief Thantri, a nominee of the state and a member of Union Ministry of Culture. A second committee, namely the advisory committee was to be constituted to advise the administrative committee on policy matters and ensure that regular audits of temple's finances take place. The income accruing to the temple will be extended to improve the facilities for the worshippers as the advisory

committee may deem fit. The main aim of the committees would be to preserve the treasures and properties of the temple and to look if the funds have been misappropriated.

CONSTITUTIONAL VIEW

It takes up larger issue of principle in matters involving religious practice and a secular country cannot fully give the state, or its nominees, any role in the administration and running of the temples. But the judgement given by the apex court in this regard gives state as well as judiciary to be an indirect player in how the temple is managed. For some people it appears to be violative of the spirit of secularism including Article 25ⁱⁱⁱ and Article 26^{iv} of the Indian Constitution. Let us assume for a second that the interference of the state in running religious institutions does not affect the right of any Hindu to profess and practice his religion. But would the same be applicable to the right to propagate any religion as guaranteed under Article 25 of the constitution?

BAR UNDER ARTICLE 363^v

Article 363A^{vi} expressly deleted Article 291 and Article 362. It states that the person who was recognized as a ruler of Indian state or his successors, shall, cease to be recognized as ruler or successor of ruler after the 26th amendment. The reliefs were granted only on the interpretations suggested by the plaintiff and would not come under the purview of the bar engrafted in Article 363 of the Constitution. The dispute neither arose out of the provisions of the covenant, nor out of the provision of the Indian Constitution which relates to the covenant and to attract Article 363, should the dispute arise out of either limb as mentioned above.

END NOTES

ⁱ **Art. 362.** Rights and privileges of Rulers of Indian States Rep by the Constitution (Twenty sixth Amendment) Act, 1971.

ⁱⁱ **Art. 366(22).** Ruler means the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty sixth Amendment) Act, 1971 , was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler.

ⁱⁱⁱ **Art. 25. Freedom of conscience and free profession, practice and propagation of religion:**

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

^{iv} **Art. 26. Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right:**

(a) To establish and maintain institutions for religious and charitable purposes;

(b) To manage its own affairs in matters of religion;

(c) To own and acquire movable and immovable property; and

(d) To administer such property in accordance with law.

^v **Art. 363.** Bar to interference by courts in disputes arising out of certain treaties, agreements, etc:

(1) Notwithstanding anything in this Constitution but subject to the provisions of Article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

^{vi} **Art. 363A.** the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty sixth Amendment) Act, 1971 , was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler shall, on and from such commencement, cease to be recognised as such Ruler or the successor of such Ruler.