



"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

FRIDAY, THE 5TH DAY OF JULY 2024 / 14TH ASHADHA, 1946

W.P. (C) NO. 17371 OF 2022

PETITIONERS:

- 1 AMMANOOR PARAMESWARAN CHAKYAR
AGED 73 YEARS, S/O LATE KUNJUNNI CHAKYAR,
AMMANNUR CHAKYAR MADOM, CHACHU CHAKYAR ROAD,
IRINJALAKUDA, PIN - 680 121.
- 2 AMMANOOR NARAYANAN CHAKYAR @ RAJANEESH B.
AGED 41 YEARS, S/O LATE V.S. CHANDRA BABU,
AMMANNUR CHAKYAR MADOM, CHACHU CHAKYAR ROAD,
IRINJALAKUDA, PIN- 680 121.
- 3 AMMANOOR RAMAN CHAKYAR @ RAVIKUMAR B.
AGED 38 YEARS, S/O LATE V.S. CHANDRA BABU,
AMMANNUR CHAKYAR MADOM, CHACHU CHAKYAR ROAD,
IRINJALAKUDA, PIN- 680 121.
- 4 AMMANOOR MADHAV CHAKYAR @ MADHAV BABU
AGED 28 YEARS, S/O LATE V.S. CHANDRA BABU,
AMMANNUR CHAKYAR MADOM, CHACHU CHAKYAR ROAD,
IRINJALAKUDA, PIN - 680 121.

BY ADVS.

K.S.BHARATHAN

ALPHIN ANTONY

AADITHYAN S.MANNALI

VISAKH ANTONY

CHRISTINE MATHEW

C.J.LIZY

RANCE R.



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RESPONDENTS :

- 1 * [THE STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, REVENUE (DEVASWOM) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001.]

* [THE STATE OF KERALA REPRESENTED BY THE PRINCIPAL SECRETARY REVENUE, (DEVASWOM), GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.]
- 2 KODALMANIKYAM DEVASWOM MANAGING COMMITTEE OFFICE OF KODALMANIKYAM DEVASWOM, IRINJALAKUDA, PIN- 680 121, REPRESENTED BY ITS ADMINISTRATOR.
- 3 * [THE COMMISSIONER, KODALMANIKYAM DEVASWOM, REVENUE (DEVASWOM) DEPARTMENT, ROOM NO:395, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN 695001.]

* [THE COMMISSIONER KODALMANIKYAM DEVASWOM OFFICE OF KODALMANIKYAM DEVASWOM, IRINJALAKUDA, PIN - 680 121.]
- 4 THE ADMINISTRATOR
KODALMANIKYAM DEVASWOM, OFFICE OF
KODALMANIKYAM DEVASWOM, IRINJALAKUDA,
PIN - 680 121.
- 5 PARMESHWARAN NAMBOOTHIRIPAD,
MEMBER, SREE KODALMANIKYAM DEVASWOM MANAGING
COMMITTEE, NEDUMPILLY THARANANELOOR MANA,
KIZHUTHANI, IRINJALAKUDA, PIN- 680 121.
- 6 PADMANABHAN NAMBOOTHIRIPAD,
THANTHRI, VELUTHEDATH THARANANELOOR
PADINJAREMANA, KATTOOR, PIN - 680 592.



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- 7 C.N. NARYANAN NAMBOOTHIRIPAD,
THANTHRI, CHEMBAPILLY THARANANELOOR MANA,
NEDUMPURA, KATTOOR, PIN - 680 592.
- 8 A.R. VASUDEVAN NAMBOOTHIRI,
THANTHRI, ANIMANGALATH MANA, MAPRANAM,
MÄ,,DAYIKONAM, PIN - 680 712.
- 9 THRIVIKRAMAN NAMBOOTHIRIPAD,
THANTHRI, NAGARMANNU MANA, NAGARAMANNU ILLAM,
NADVARAMBU, PIN - 680 121.
- 10 RAMAN NAMBOOTHIRIPAD,
THANTHRI, KEDANGASSERY, THARANANELOOR MANA,
THANISSERRY, IRINJALAKUDA PIN - 680 701.
- 11 SATHEESHAN NAMBOOTHIRIPAD, THANTRI
NEDUMPILLY THARANANELOOR MANA KIZHUTHANI,
IRINJALAKUDA, PIN- 680 701.
- 12 THE PUBLIC INFORMATION OFFICER AND MANAGER,
KODALMANICKYAM TEMPLE, IRINJALAKUDA, PIN- 680
121.

*THE DESCRIPTION OF RESPONDENT NO.1 AND 3 ARE
CORRECDED AS PER THE ORDER DATED 01.06.2022 IN
I.A.NO.1 OF 2022 OF W.P. (C) NO.17371 OF 2022.

BY ADVS.

R1 BY SRI. S. RAJMOHAN, SR.GOVERNMENT PLEADER

R2, R4 & R12 BY N.N.SUGUNAPALAN (SR.)

R2, R4 & R12 BY S.SUJIN

R7 TO R11 BY P.N.DAMODARAN NAMBOODIRI

R7 TO R11 BY HRITHWIK D. NAMBOOTHIRI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR FINAL
HEARING ON 02.04.2024, THE COURT ON 05.07.2024 DELIVERED
THE FOLLOWING:

**“C.R.”****ANIL K. NARENDRAN & P.G. AJITHKUMAR, JJ.****W.P.(C) No.17371 of 2022****Dated this the 5th day of July, 2024****JUDGMENT**P.G.Ajithkumar, J.

The petitioners are members of the Ammannoor Family. They have the hereditary right to perform 'Koothu' and 'Koodiyattam' at the Koothambalam in Koodalmanikyam Temple. That is a part of religious, spiritual, ritualistic and ceremonial worship of the Deity. Members of the Ammannoor Family alone can perform at the Koothambalam and a member should undergo an ordination ceremony before starting performance in the Koothambalam. It being a religious and ritual ceremony followed from time immemorial in the Temple, the 2nd respondent, Koodalmanikyam Devaswom Managing Committee cannot change the practice. It is recognised as a cultural heritage of humanity by the United Nations Educational, Scientific and Cultural Organisation (UNESCO).



1.1. When the custom and usage enable members of the Ammannoor Family alone to perform 'Koothu' and 'Koodiyattam' in the Koothambalam, there can be no dilution or alteration to that customary right. It is connected to temporal activities and the 2nd respondent, in exercise of its duties under Section 10 of the Koodalmanikyam Act, 2005 (the Act for short), is expected to continue the practice without any change. In the light of the provisions of Section 35 of the Act, decision of the Tantris of the Temple, who are respondent Nos.6 to 11, is final in the matter. Disregarding those aspects, the 2nd respondent resolved in its meeting held on 19.02.2022 to allow other Hindu artists also to perform 'Koothu' and 'Koodiyattam' at the Koothambalam in Koodalmanikyam Temple.

1.2. Of course, the decision was to allow others without affecting the right of the members of the Ammannoor Family to perform in the Koothambalam during the period of the festival of 41 days. Resolution No.1 in Ext.P1 minutes is the said decision. In terms of it, the 3rd respondent Commissioner



and the Government were requested to take steps for implementing the said decision. The petitioners would contend that the said decision is illegal and an invasion on their hereditary rights. It violates Articles 25 and 26 of the Constitution of India and the rights of the Deity as well as the devotees. Therefore, the petitioners filed this writ petition under Article 226 of the Constitution of India, seeking to declare as illegal and quash decision No.1 in Ext.P1.

2. Respondent No.1 filed counter affidavit justifying the decision of the 2nd respondent to open up the Koothambalam for other Hindu artists also, without affecting the rights of the petitioners. It is contended that the Koothambalam is more than two centuries old, which is considered to be the best of its kind in terms of design and functionality. The Koothambalam is intended for performance of 'Koothu' and 'Koodiyattam'. Now, the performance by members of the Ammannoor Family takes place for a few days in a year by leaving the Koothambalam idle for the remaining period. That leads to its poor upkeep and consequent



degeneration. It is a heritage structure built up of wood. It was repaired and restored with the aid of the Central Government. It has to be put in regular use and thereby to keep away wood corroding worms and vermin. Now 'Koothu' and 'Koodiyattam' are performed in the Koothambalam without audience. The public are allowed to view the performance only through the slits on the sides. Unless the audience is permitted, the purpose of such performance could not be served. Such a divide between the performers and the audience is not in the interest of the general public and also the propagation of the said Temple art forms. The 1st respondent accordingly maintains that the decision taken by the 2nd respondent is quite legal.

3. Respondent Nos.2 and 4 filed a counter affidavit contending as follows:

The Koothambalam was constructed utilizing Rs.3½ crores allotted by the Department of Archaeology, Government of India. The decision taken by the 2nd respondent to allow Hindu artists other than members of the Ammannoor Family to



perform in the Koothambalam does not in any way affect the rights of the petitioners. Members of the Ammannoor Family perform 'Koothu' and 'Anguleeyam' for 41 days during the festival and by allowing others to perform in the Koothambalam during the remaining days does not in any way affect the right of the petitioners. Such a decision was taken in the presence of the 5th respondent, who was nominated to the 2nd respondent Committee by the Government from among the Tantris. Since that decision was taken with the concurrence of Tantris, the petitioners have no right to question it. If the Koothambalam is kept idle, that will adversely affect its prosperity. The decision in question will be implemented only after getting necessary sanctions and holding a discussion with all concerned.

3.1 Respondent Nos.2 and 4 filed additional counter affidavits dated 22.07.2022 and 19.08.2023. Besides describing the structural and dimensional specialties of the Koothambalam, these respondents contend that the Cochin Devaswom Board opened up Koothambalams in the Temples



under its control to the artists from all sects of the society. At the Koothambalam in the Koodalmanikyam Temple, the audience are kept out while 'Koothu' and 'Koodiyattam' are performed. The public can view only through the windows of the Koothambalam even though the Koothambalam has space intended for the audience. The gap thereby created between the performers and the viewers would affect the popularity and its development.

3.2. A few advantages of allowing other artists also to perform in the Koothambalam are enlisted, which are the following:

- i. The temple dance forms including 'Koothu' and 'Koodiyattam' will be given a wider audience and acceptance among the public and Koothambalams are best place to exhibit such talents and earn the appreciation of the devotees/audience.
- ii. These dance forms which depict scene from the Ramayana and Mahabharatha and other Hindu religious scriptures when enacted before an audience give wide acceptance to the dance form as also the performer apart from enlightening the audience about the epics and dance forms.
- iii. Permitting such artists to perform in the



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'Koothambalam' would also help promote the dance form and would also save the expense of putting up necessary stage and other required accessories when performed outside the Koothambalam.

- iv. The precincts of a temple should always encourage universal brotherhood, of course keeping within the 'aacharams' of the temple. When there is no restriction for the devotee to enter the main temple and pay their respects to the deity, then there ought not to be restriction for entry in the Koothambalam for other performers and audience.

It is also averred that the expenditure in connection with all customary rites in the Temple is met in accordance with 'pathivu' as enumerated in Schedule 1 to the Act.

4. Respondent Nos.7 to 11 filed a counter affidavit with the following contentions:

'Koothu' and 'Koodiyattam' are performed at the Koothambalam as part of spiritual and ceremonial worship in Koodalmanikyam Temple. It is believed to be performed before the Deity. For any member of the Ammannoor Family to perform in the Koothambalam, he has to undergo an ordination ceremony. Therefore, birth in the Ammannoor



Family alone will not enable one to perform at the Koothambalam. Besides being a member of that Family, he should have expertise in those Temple arts and also to undergo the ordination ceremony under the auspices of these respondents. Each time, a 'Chakyar' performs at the Koothambalam, he has to follow customary rites of taking bath in the holy Temple pond, praying before the Deity and enter in the Koothambalam with lamp lighted from the Sreekovil. The performance of 'Koothu' and 'Koodiyattam' in the Koothambalam is thus believed to be an offering before the Deity and part of religious ceremony. The 2nd respondent does not have any authority to allow others to perform 'Koothu' and 'Koodiyattam' at the Koothambalam. The said decision is against the provisions of Section 10 of the Act. It being a religious and ritual ceremony, a decision concerning it could be taken only by these respondents. Since they were not consulted before taking the said decision, they have put in written objections, a copy of which is Ext.R11(a).



5. The petitioners filed reply affidavits dated 05.11.2022 and 14.02.2023. They have explained and reiterated the contentions in the writ petitions. It is contended that the decision taken by the Cochin Devaswom Board to open up Koothambalams in the Temples under its control has no relevance for, the performance of 'Koothu' and 'Koodiyattam' at the Koodalmanikyam Temple is a customary religious practice unlike in the other temples. The petitioner, however, conceded that there is a requirement for the performance of 'Koothu' as an offering throughout the year, and the decision for the closure of the Koothambalam for the rest of the year was taken by the 2nd respondent only. The petitioners further averred that there was no issue regarding the right of the believing public to enter Koothambalam. It is maintained that the view expressed by the 1st respondent in that matter is subject to the Act, and fundamental, statutory and Constitutional rights of the petitioners and the Deity.

6. On 01.08.2023, it was reported that respondent No.5 expired on 25.06.2022, but another representative of



the Tantris was not yet nominated to the Managing Committee of Koodalmanikyam Devaswom. The learned Senior Government Pleader later placed on record notification dated 14.06.2023 by which a new representative of the Tantris was nominated. He was, however, not impleaded.

7. Heard the learned counsel for the petitioners, the Senior Government Pleader, the learned Senior Counsel appeared on instructions from the learned Standing Counsel of respondents No. 2 and 4 and the learned counsel for respondents No.7 to 11.

8. Koodalmanikyam Temple is unique. It is believed to be the only Temple in India, where God Bharathan was incarnated. The Koothambalam in the Temple is also unique for its design and functionality. It was constructed in accordance with the guidelines contained in Chapter 2 of Natya Shastra of Bharathamuni. On account of its dimensional peculiarities, scenic sculptures, acoustic arrangements and overall opulence it has a special place among the Koothambalams in various



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Temples. It has a dressing room (Nevethya), stage (aniyara) and auditorium (prekshaka graham).

9. It is an undisputed fact that now, members of the Ammannoor Family alone are performing arts forms of 'Koothu' and 'Koodiyattam' at the Koothambalam in Koodalmanikyam Temple. They present those art forms for a period of 41 days in a year which is during the Temple festival. During the remaining period, the Koothambalam remains closed. The case set forth by the petitioners in the writ petition is that 'Koothu' and 'Koodiyattam' are performed during those days in terms of the customary religious rites being followed in the Temple from time immemorial. In the reply affidavit dated 14.02.2023, the petitioners made a deviation in that regard. Paragraph No.9 in the said reply affidavit is extracted below:

"9. In answer to the allegations made in paragraph 6 of the counter affidavit, it is submitted that performance of various "Koothu", is also a kind of offering to the deity. The fact that the performance of "Koothu" is also a kind of offering has to be made known to the public, and the same is the part of the duty statutorily cast on the



second respondent. Here a reference to "krishnanaattam" which is performed at Sree Guruvayoor Temple would be apposite. Respondents 2-4 have not highlighted the performance of "Koothu" as a kind of offering to the deity, so far. If the said aspect has been properly highlighted among the believing public, the petitioners reasonably believe that there would be the requirement of performance of "Koothu" as an offering throughout the year. It is only the 2nd respondent which is responsible for the closure and neglect of the "Koothambalam" for the rest of the year."

(underline supplied)

10. The 1st respondent as also respondent Nos.2 and 4 pointed out that on account of the closure, except for the days of performance, the Koothambalam, especially the wooden structures, get degenerated. The Koothambalam is believed to be more than 200 years old. It is pointed out that the copper covered roof developed leaks through the areas of nailing in course of time. The consequent damages to the structure were repaired. An amount of Rs.3½ crores was spent by the Department of Archaeology, Government of India for the repair and restoration of the Koothambalam. It is such a structure that remains unutilised for most of the year. It can



certainly be said that regular use of the Koothambalam will help to its better care and keep the wood corroding worms and vermin away.

11. UNESCO recognized and declared 'Koodiyattam' as a masterpiece of oral and intangible heritage of humanity in the year 2001. That honour obliges all concerned to see that the said art form is not endangered and extinct. Unless popularised and facilitated for preservation and advancement, its continued acceptance among the Temple worshipers cannot be ensured. In that view of the matter, the requirement of performance of 'Koothu' and 'Koodiyattam' throughout the year is a matter to be taken very seriously.

12. The question that immediately arises for consideration is whether 'Koothu' and 'Koodiyattam' performed at the Koothambalam in Koodalmanikyam Temple is a customary religious, ritualistic and ceremonial worship before the Deity.

13. A Constitution Bench of the Apex Court in **Commissioner, Hindu Religious Endowments v. Sri**



Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [AIR 1954 SC 282] held that the essential part of a religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices the superstructure of religion is built. Without which, a religion will be no religion. Test to determine whether a part or practice is essential to the religion is to find out whether the nature of religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such parts. Because it is the very essence of that religion and alterations will change its fundamental character. Such permanent essential parts is what is protected by the Constitution. Nobody can say that an essential part or practice of one's religion has changed from a particular date or by an event. Such alterable parts or practices are definitely



not the core of religion where the belief is based and religion is founded upon. It could only be treated as mere embellishments to the non-essential part or practices.

14. In **SSTS Saheb v. State of Bombay [1962 (Supp.) 2 SCR 496]**, **Seshammal v. State of Tamilnadu [(1972) 2 SCC 11]** and **Commissioner of Police v. Acharya Jagdishwarananda Avadhuta [(2004) 12 SCC 770]** the Apex Court reiterated the above principles and held that those aspects are to be looked into to determine whether a particular practice really constitutes an essential part of religion or religious practice and is essential or not.

15. In **N.Adithayan v. Travancore Devaswom Board [(2002) 8 SCC 106]**, the Apex Court held that where a temple has been constructed and consecrated as per agamas, it is considered necessary to perform the daily rituals, poojas and recitations as required to maintain the sanctity of the idol and it is not that in respect of any and every temple any such uniform rigour of rituals can be sought to be enforced, de hors its origin, the manner of construction



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or method of consecration. No doubt only a qualified person well versed and properly trained for the purpose alone can perform poojas in the temple since he has not only to enter into the sanctum sanctorum but also touch the idol installed therein. It therefore goes without saying that what is required and expected of one to perform the rituals and conduct poojas is to know the rituals to be performed and mantras, the necessary, to be recited for the particular deity and the method of worship ordained or fixed therefore.

16. A Division Bench of this Court (both of us were the parties) in **Vishnunarayanan v. Secretary, Department of Revenue and Devaswom [2024 KHC OnLine 166 : 2024 (2) KHC SN 10 : 2024 KLT OnLine 1570]** elaborately considered the need to protect and preserve the religious ceremonies and rites in Temples. Extraction of the following passage is apposite and helpful to answer the question involved herein. Para 33.11 of the judgment reads,-

“33.11. In **Sri Venkataramana Devaru [AIR 1958 SC 255]** the Apex Court noticed that the precise connotation of the expression ‘matters of religion’



came up for consideration by that Court in **Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [(1954) SCR 1005]** and it was held therein that it embraced not merely matters of doctrine and belief pertaining to the religion but also the practice of it, or to put it in terms of Hindu theology, not merely its 'Gnana' but also its 'Bhakti' and 'Karma Kandas'. In that decision, Mukherjea, J., (as he then was) observed that, in the first place, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be a daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve an expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b)."



17. It is thus obvious that where a temple has been constructed and consecrated as per agamas, it is considered necessary to perform the daily rituals, poojas and recitations as required to maintain the sanctity of the idol. What is required and expected for a particular Deity is to perform the rituals and conduct poojas according to the method of worship ordained or fixed therefore. In **Commissioner of Police and others v. Acharya Jagadishwarananda Avadhuta and another [(2004) 12 SCC 770]** the Apex Court held that the protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of doctrine or belief but extends to acts done in pursuance of religion and, therefore, contains a guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion. What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background, etc. of the given religion.



18. As stated, nobody has a dispute as to the fact that 'Koothu' and 'Koodiyattam' are performed at the Koothambalam in the Koodalmanikyam Temple only for 41 days in a year. It is also undisputed that members of the Ammannoor Family alone perform at the Koothambalam. Exts.P10 and P11 are extracts from two publications of Koodalmanikyam Devaswom. The original publications were made available for our perusal by the learned counsel for the petitioners. The facts narrated in Exts.P10 and P11 concerning the way in which 'Koothu' and 'Koodiyattam' are performed at the Koothambalam have been confirmed by respondent Nos.7 to 11 in their counter affidavits. Being the Tantris of the Temple, their opinion in regard to all religious, spiritual, ritual and ceremonial matters pertaining to the Temple is final, subject only that their decision should not violate any provision of law in force. Going by the law laid down in the aforesaid decisions and also the provisions in Section 35 of the Act, a different view is not possible.



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19. Section 35 of the Koodalmanickam Devaswom Act, 1971 reads,-

“35. Thanthri to be final authority in religious matters.- (1) Nothing in this Act shall be deemed to authorize the Committee or the Commissioner or the Government to interfere with the religious or spiritual matters pertaining to the Devaswom.

(2) The decision of the Thanthri of the Temple on all religious, spiritual, ritual or ceremonial matters pertaining to the Devaswom shall be final, unless such decision violates any provision contained in any law for the time being in force.”

So much so, the definite plea taken by respondents No.7 to 11 that the performance of 'Koothu' and 'Koodiyattam' at the Koothambalam in the Koodalmanikyam Temple is a religious practice has to be accepted. All concerned agree also that such a practice has been in vogue from time immemorial. Nobody pointed out any instance of deviation from that trodden path. Therefore, the said religious practice can be considered only as the tenet, custom and usage prevalent in Koodalmanikyam Temple, the inception of which is lost in antiquity. Therefore, the 2nd respondent cannot decide,



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without the consent of the Tantris, to deviate from or dilute the said religious practice.

20. Section 10 of the Act enumerates the duties of the 2nd respondent. Performance of the rites and ceremonies in the Temple shall be subject to the custom and usage. That is the solemn and sublime obligation of the 2nd respondent.

Relevant part of Section 10 of the Act is extracted below:

“10. Duties of Committee.- Subject to the provisions of this Act and the rules made thereunder, it shall be the duty of the Committee,-

(a) subject to the custom and usage in the Temple, to arrange for the proper performance of the rites and ceremonies in the Temple and the subordinate temples attached thereto in accordance with the pathivu or scale of expenditure fixed for the Temple and the subordinate temples under section 20 or, till the pathivu or scale of expenditure is fixed under that section in accordance with the pathivu or scale of expenditure specified in Schedule 1 of the Koodalmanickam Devaswon Act, 1971 (7 of 1971).”

21. Concerning the obligation to preserve the religious practices of all religions and the corresponding duties, the Apex Court in **Sarika v. Shri Mahakaleshwar Mandir**



Committee [(2018) 17 SCC 112] noticed that there is a pious purpose of all the religious activities. No religion breeds hatred. It is in order to bring harmony and to understand basic human values and for self-realisation and to visualise the concept of equality of pilgrimages by the various sections of people of various religions. Secularism is the basic structure of the Constitution that has to be given the meaning that is developing understanding and respect towards different religions. The essence of secularism is non-discrimination of people by the State on the basis of religious differences.

22. In **Suo motu v. State of Kerala and others [ILR 2022 (3) KHC 1]** the question was as to whether the Cochin Devaswom Board could intervene and decide either to discontinue or modify a religious practice prevailing in a Temple under its administrative control. While answering that question in the negative, this Court recalled the observations in **Sarika [(2018) 17 SCC 112]** where the Apex Court noticed that there is a Constitutional obligation to preserve



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the religious practices of all religions, culture and there is also a corresponding duty to act in that direction. The Apex Court held that it is for the experts in the field of religion to decide about the rituals and ceremonies to be performed. It is not for the court to make suggestions in this regard. It is not within the jurisdiction of the Court to dictate or prescribe or restrain the religious practices and poojas to be performed in the temple. The religious practices and poojas are required to be performed following the ancient rituals and practices. Paragraph No.44 of that decision read thus;

"44. With respect to the method of "lingarchan" i.e., the method of linga pooja, the 27th chapter of "Ling Mahapuranm" has been placed on record. That contains a detailed method of lingarchan running into 54 strotam. Apart from that "Shiv Mahapuranam", Vayveey Sanhita containing details of Shastro kt Shiv Poojan method in twenty-fourth chapter has been placed on record. Pooja of different lingam may be somewhat different. It is for the experts in the field of religion to decide about the rituals and ceremonies to be performed. It is not for this Court to make suggestions in this regard.

(underline supplied)



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23. As stated above, the performance of 'Koothu' and 'Koodiyattam' at the Koothambalam in the Koodalmanikyam Temple is a religious and ritual ceremony. In the light of the proposition of law mentioned above, and in view of the provisions of Section 35 of the Act, the suggestion of the petitioners that 'Koothu' and 'Koodiyattam' as a devotion to the Deity can be performed throughout the year, is a matter to be decided by the Tantris and not by the 2nd respondent. If consented by respondents No.6 to 11, who are the Tantris, the 2nd respondent will be able to implement the decision without affecting the Temple rituals and practices in any manner.

24. The contention of respondents No.2 and 4 is that the decision in question was taken with the concurrence of respondent No.5, and he represents the Tantris, the said decision cannot be questioned, especially, by respondents No.7 to 11. We are unable to accept the said contention. When a prevailing religious practice in the Temple is to be changed, the same can be had only with the consent of the



Tantris. The nomination of a representative of the Tantris to the Managing Committee is to enable the Committee to carry out its day-to-day administration of the Devaswom in accordance with law. That will not enable the Managing Committee to circumvent the provisions of Section 35 of the Act.

25. When a customary religious practice prevailing in the temple is to be changed, it is for the Tantris to take a decision on that matter. Ext.R11(a) is the objection put in by respondent Nos.7 to 11 to the decision in question contained in Ext.P1. That stands testimony to their objection to the change in the religious practice concerning 'Koothu' and 'Koodiyattam' at the Koothambalam in Koodalmanikyam Temple. In such circumstances, the presence of respondent No.5 while taking the said decision does not make it valid.

26. Coming to the question, whether the worshipers can be allowed to view the performance of 'Koothu' and 'Koodiyattam' at the Koothambalam in the Koodalmanikyam Temple, the view taken by the petitioners in their reply



affidavit dated 14.02.2023 assumes much importance. The view taken is that there was no issue regarding the right of the believing public to enter the Koothambalam. As stated above, Koothambalam has a well defined auditorium (prekshaka graham) besides the stage (ranga mandapam) and green room (aniyara). Unless the viewers are intended to be allowed inside, such an auditorium should not have been devised. The submission of the learned Senior Government Pleader by highlighting the recitals regarding 'Chakyarkoothu' contained on page 759 of the Encyclopedia published by Kerala Encyclopedic Publications Vol-VII, that 'Koothu' could be performed even on the premises outside Temples has much force in the aforementioned facts and circumstances.

27. As rightly and ardently canvassed by the learned Senior Counsel appearing for respondents No.2 and 4 the performance of 'Koothu' and 'Koodiyattam' is intended for public view and that there is no meaning in restricting entry of the public to the Koothambalam during the performance.



28. When it is proved that 'Koothu' and 'Koodiyattam' at the Koothambalam in Koodalmanikyam Temple are religious and customary rituals, the same has to be performed with necessary zeal and devotion. If the worshipers are allowed to view the performance, it is absolutely necessary that the viewers and all concerned to follow the temple practices and religious observances inside the Koothambalam. While allowing viewers inside the Koothabalam no religious and customary rites being followed in the Temple as well as the Koothambalam can be violated. It is certainly the duty and obligation of the 2nd respondent to ensure that all such observances are scrupulously followed in view of the provisions of Section 10 of the Act. We leave that matter there for, the reliefs claimed in the writ petition are confined only in regard to the decision No.1 in Ext.P1.

29. In view of what are stated above, we conclude that decision No.1 in Ext.P1 is ultra vires the provisions of Sections 10 and 35 of the Koodalmanikyam Devaswom Act, 2005 inasmuch as the 2nd respondent decided so without the



consent of the Tantris. The said decision is therefore illegal and liable to be set aside. We do so. The writ petition is accordingly disposed of by quashing decision No.1 in Ext.P1 and making the aforesaid observations in regard to the performance of 'Koothu' and 'Koodiyattam' beyond the period of 41 days of the Temple festival and the entry of worshipers to the Koothambalam in the Koodalmanikyam Temple to view the performance of 'Koothu' and 'Koodiyattam'.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE



APPENDIX OF WP(C) 17371/2022

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE DECISION OF THE 2ND RESPONDENT.
- EXHIBIT P2 TRUE COPY OF THE APPLICATION SUBMITTED BY THE 1ST PETITIONER UNDER RIGHT TO INFORMATION ACT TO THE 12TH RESPONDENT ON 24.02.2022.
- EXHIBIT P3 TRUE COPY OF THE REPLY DATED 21/03/2022 ISSUED BY THE PUBLIC INFORMATION OFFICER OF THE DEVASWOM.
- EXHIBIT P4 TRUE COPY OF REPLY DATED 21.03.2022 ISSUED BY 12TH RESPONDENT TO MR. PRASANTH. A. P.
- EXHIBIT P5 TRUE COPY OF THE LETTER DATED 21.02.2022 ISSUED BY THE CHAIRMAN OF THE 2ND RESPONDENT TO THE 3RD RESPONDENT.
- EXHIBIT P5A TYPED COPY OF EXHIBIT P5.
- EXHIBIT P6 TRUE COPY OF THE OPINION GIVEN BY 7TH RESPONDENT DATED 04.03.2022.
- EXHIBIT P7 TRUE COPY OF THE OPINION GIVEN BY 8TH RESPONDENT DATED 25.02.2022.
- EXHIBIT P8 TRUE COPY OF THE OPINION GIVEN BY 9TH RESPONDENT DATED 25.02.2022.
- EXHIBIT P9 TRUE COPY OF THE OPINION GIVEN BY 10TH RESPONDENT DATED 25.02.2022.
- EXHIBIT P10 TRUE COPY OF THE RELEVANT PAGES (PAGES 51 AND 52) OF "SREE KODALMANIKYAM CHARITHRASAMKSHEPAM" AUTHORED BY



W.P.(C) No.17371 of 2022

PAYIKKAT PARAMESHWARAN NAMBOOTHIRIPAD
PUBLISHED BY 2ND RESPONDENT.

EXHIBIT P11 TRUE COPY OF THE RELEVANT PAGES (PAGES
40 TO 43) OF "KODALMANIKYAM KSHETHRAM
(PURAVRITHAM - CHARITHRAM) AUTHORED BY
DR. K.K.N. KURUP PUBLISHED BY 2ND
RESPONDENT.

EXHIBIT P12 TRUE COPY OF THE REPRESENTATION
SUBMITTED BY PETITIONERS TO THE
CHAIRMAN OF THE 2ND RESPONDENT DATED
23.02.2022.

EXHIBIT P13 TRUE COPY OF THE JUDGMENT DATED
07.10.2014 IN D.B.P. NO. 74 OF 2014.

EXHIBIT P13 TRUE COPY OF THE SCREENSHOT THAT WAS
POSTED IN THE FACEBOOK PAGE OF THE
CHAIRMAN OF THE 2ND RESPONDENT DATED
11.08.2022

RESPONDENT EXHIBITS

EXHIBIT R11 A TRUE COPY OF THE OBJECTION DATED
28.2.2022 FILED BEFORE THE 2ND
RESPONDENT AGAINST THE DECISION IN EXT
P1

EXHIBIT R4 (A) 1 PHOTOGRAPHS OF THE KOOTHAMBALAM AND
ITS INTERIORS

EXHIBIT R4 (A) 2 PHOTOGRAPHS OF THE KOOTHAMBALAM AND
ITS INTERIORS

EXHIBIT R4 (A) 3 PHOTOGRAPHS OF THE KOOTHAMBALAM AND
ITS INTERIORS

EXHIBIT R4 (A) 4 PHOTOGRAPHS OF THE KOOTHAMBALAM AND
ITS INTERIORS



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EXHIBIT R4 (A) 5	PHOTOGRAPHS OF THE KOOHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 6	PHOTOGRAPHS OF THE KOOHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 7	PHOTOGRAPHS OF THE KOOHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 8	PHOTOGRAPHS OF THE KOOHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 9	PHOTOGRAPHS OF THE KOOHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 10	PHOTOGRAPHS OF THE KOOHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 11	PHOTOGRAPHS OF THE KOOHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 12	PHOTOGRAPHS OF THE KOOHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 13	PHOTOGRAPHS OF THE KOOHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 14	PHOTOGRAPHS OF THE KOOHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 15	PHOTOGRAPHS OF THE KOOHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 16	PHOTOGRAPHS OF THE KOOHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 17	PHOTOGRAPHS OF THE KOOHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 18	PHOTOGRAPHS OF THE KOOHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 19	PHOTOGRAPHS OF THE KOOHAMBALAM AND ITS INTERIORS



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EXHIBIT R4 (A) 20	PHOTOGRAPHS OF THE KOOOTHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 21	PHOTOGRAPHS OF THE KOOOTHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 22	PHOTOGRAPHS OF THE KOOOTHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 23	PHOTOGRAPHS OF THE KOOOTHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 24	PHOTOGRAPHS OF THE KOOOTHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 25	PHOTOGRAPHS OF THE KOOOTHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 26	PHOTOGRAPHS OF THE KOOOTHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 27	PHOTOGRAPHS OF THE KOOOTHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 28	PHOTOGRAPHS OF THE KOOOTHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 29	PHOTOGRAPHS OF THE KOOOTHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 30	PHOTOGRAPHS OF THE KOOOTHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 31	PHOTOGRAPHS OF THE KOOOTHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 32	PHOTOGRAPHS OF THE KOOOTHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 33	PHOTOGRAPHS OF THE KOOOTHAMBALAM AND ITS INTERIORS
EXHIBIT R4 (A) 34	PHOTOGRAPHS OF THE KOOOTHAMBALAM AND ITS INTERIORS



W.P.(C) No.17371 of 2022

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| EXHIBIT R4 (A) 35 | PHOTOGRAPHS OF THE KOOTHAMBALAM AND ITS INTERIORS |
| EXHIBIT R4 (A) 36 | PHOTOGRAPHS OF THE KOOTHAMBALAM AND ITS INTERIORS |
| EXHIBIT R4 (A) 37 | PHOTOGRAPHS OF THE KOOTHAMBALAM AND ITS INTERIORS |
| EXHIBIT R4 (A) 38 | PHOTOGRAPHS OF THE KOOTHAMBALAM AND ITS INTERIORS |
| EXHIBIT R4 (A) 39 | PHOTOGRAPHS OF THE KOOTHAMBALAM AND ITS INTERIORS |
| EXHIBIT R4 (A) 40 | PHOTOGRAPHS OF THE KOOTHAMBALAM AND ITS INTERIORS |
| EXHIBIT R4 (B) | TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN THE KERALA KAUMUDI DAILY DATED 11/2/2022 |
| EXHIBIT R4 (C) | TRUE COPY OF THE SCHEDULE 1 OF THE KODALMANIKKYAM DEVASWOM ACT, 1971 |