

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE V.G.ARUN

WEDNESDAY, THE 24<sup>TH</sup> DAY OF MAY 2023 / 3RD JYAISHTA, 1945

WP(C) NO. 15433 OF 2022

PETITIONER:

RAVEENDRAN P.T  
AGED 59 YEARS  
S/O. THANKAPPAN, KARIMAKKAD, PALLIPPARAMBILHOUSE,  
PALANCHERRY MUGHAL, EDATHALA, POOKKATTUPADY, PIN - 683  
561.

BY ADVS.  
SHERRY J. THOMAS  
JOEMON ANTONY

RESPONDENTS:

- 1 THE STATE OF KERALA  
REPRESENTED BY HOME DEPARTMENT, GROUND FLOOR, MAIN  
BLOCK, SECRETARIAT, THIRUVANANTHAPURAM, PIN -- 695 001.
- 2 THE DISTRICT PANCHAYAT  
COLLECTORATE, 1ST FLOOR, CIVIL STATION, EACHAMUKKU,  
KUNNUMPURAM P.O., KAKKANADU, ERNAKULAM - 582 030.
- 3 THE REVENUE DIVISIONAL OFFICER  
REVENUE DIVISIONAL OFFICE, 1ST FLOOR, K.B. JACOB ROAD,  
FORTKOCHI, ERNAKULAM - 682 001.
- 4 THE SUPERINTENDENT OF POLICE (RURAL)  
ALUVA, POWER HOUSE JUNCTION, SUB JAIL ROAD, PERIYAR  
NAGAR, ALUVA, KERALA - 683 101.
- 5 THE STATION HOUSE OFFICER  
EDATHALA POLICE STATION, NALAM MILE, KULAKKAD, KERALA -  
683 112.
- 6 THE EDATHALA GRAMA PANCHAYAT  
EDATHALA NORTH P.O. ALUVA, PUKKATTUPADY ROAD, EDATHALA,  
ALUVA- 683 563, REPRESENTED BY ITS SECRETARY

7 THE SECRETARY  
EDATHALA GRAMA PANCHAYAT, EDATHALA NORTH P.O, ALUVA -  
PUKKATTUPADY ROAD, ALUVA - 683 563.

8 ANAND P,  
AGED 42 YEARS  
S/O. PADMAKUMAR, HOUSE NO. IX/657/G, MULLACKAI HOUSE,  
PALANCHERRY MUGHAL, EDATHALA P.O., POOKKATTUPADY, PIN -  
683 561.

BY ADVS.  
SHRI.G.SANTHOSH KUMAR (P), SC, EDATHALA GRAMA  
PANCHAYATH  
R.KRISHNA RAJ  
E.S.SONI  
KUMARI SANGEETHA S.NAIR  
RESMI A.

**OTHER PRESENT:**

GP RAJEEV JYOTHISH GEORGE

ADV. G. SANTHOSH KUMAR FOR R6 & R7

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 12.01.2023, THE COURT ON 24.05.2023  
DELIVERED THE FOLLOWING:**

**JUDGMENT**

Dated this the 24<sup>th</sup> day of May, 2023

Petitioner is a resident of Ward No.9 in Edathala Panchayat. He has filed the writ petition aggrieved by the inaction of the Panchayat, Police and Revenue authorities to stop the illegal slaughter of birds and animals in the guise of ritualistic sacrifice by the 8<sup>th</sup> respondent. The objectionable activities are carried out in a structure, resembling a temple, constructed by the 8<sup>th</sup> respondent on the second floor of his residential building. The reliefs sought in this writ petition are as follows;

- i) Call for the records pertaining to the Ext P4, P7, P8 and P9 petitions and action taken thereon.
- ii) Issue a writ of mandamus, any other writ, appropriate order or direction, directing the 6<sup>th</sup> Respondent Panchayat to initiate steps to remove the illegal structure wherein the temple is situated in building No. 9/657/G of Edathala Grama Panchayat.
- iii) Issue a writ of mandamus, any other writ, appropriate order or direction, directing the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to initiate proceedings on Ext P8 in accordance with the

Manual of Guidelines to Prevent and Control Disturbances and to Promote Communal Harmony 2005 and to close down the illegal temple in building No. 9/657/G of Edathala Grama Panchayat.

iv) Issue a writ of mandamus, any other writ, appropriate order or direction, directing the 4<sup>th</sup> and 5<sup>th</sup> Respondents to consider Ext P7 and P 10 and initiate action to prevent the illegal functioning of the temple in building No. 9/657/G of Edm Grama Panchayat.

v) Issue a writ or appropriate order declaring that the 8<sup>th</sup> Respondent cannot function any temple in building No. 9/657/G of Edathala Grama Panchayat without complying proceedings in connection with the Manual of Guidelines to Prevent and Control Disturbances and to Promote Communal harmony 2005.

vi) Provide cost of the proceedings.

2. Heard Adv. Sherry J. Thomas for the petitioner, Adv. G. Santhosh Kumar for the Panchayat, Adv. R. Krishna Raj for the 8<sup>th</sup> respondent and Government Pleader Adv. Rajeev Jyothish George for the State and its officials.

3. Learned counsel for the petitioner submitted that the 8<sup>th</sup> respondent has exhibited a board with the name 'Sree Bhramarambika Vishnumayaswami

Devasthanam' and is canvassing devotees through notices and other modes of advertisement. The 8<sup>th</sup> respondent is conducting poojas and rituals in his building day-in and day-out, accompanied by the ringing of bells, blowing of the conch and the shrieks and cries of animals and birds. The blood of the slaughtered animals is flown to the road and carcasses strewn all over the place. Additionally vehicles of persons visiting the place for conducting poojas and rituals are parked indiscriminately. All these factors have made life impossible for the petitioner and the other residents of the area.

4. Ext. P1 series of photographs are referred to prove that the Devasthanam is functioning on the second floor of the 8<sup>th</sup> respondent's building. Ext.P2 notice contains the so-called history of the temple, the powers of the deities and details about the annual festival of 2022. Ext.P3 photograph shows the blood and remnants flown and strewn over the public road.

5. It is contended that places of worship accessible to public can be constructed only with the prior approval of the District Administration as mandated in Clause 23 of the Manual of Guidelines to Prevent and Control Disturbances and to Promote Communal Harmony, 2005 (the Manual of Guidelines). The construction is illegal also for the reason that it was done without obtaining the permission envisaged under the Kerala Panchayat Building Rules. Slaughtering of animals is prohibited under the Prevention of Cruelty to Animals Act, 1960. Further, slaughtering, as part of ritualistic sacrifice, violates Section 3 of the Kerala Animals and Birds Sacrifices Prohibition Act, 1968. It is alleged that, in spite of being fully aware of the violations and there being a possibility of law and order situation, the police is not taking any action. Likewise, the Panchayat, which is conferred with the duty of ensuring public safety, convenience and health, is keeping silent, despite the health hazard and nuisance caused by the slaughtering of animals and unscientific disposal of blood and carcasses. The revenue authorities have also miserably

failed to stop the illegal functioning of the place of worship.

6. Learned Government Pleader submitted that a mass complaint was received from the residents of Palancherry Mugal in Edathala Grama Panchayat regarding the illegal functioning of a temple in the 8<sup>th</sup> respondent's building. On inquiry, it came to light that the temple is functioning without obtaining approval from the Panchayat. Although a meeting was convened by the Station House Officer of Edathala Police Station to discuss the issue, the 8<sup>th</sup> respondent took an adamant stand that he has the liberty to function the temple as part of his religious practice. On the other hand, the complainants reiterated that the activities of the temple are harmful to their physical and mental health and warned that a mass agitation will be started if the functioning of the temple is not stopped. After discussion, the 8<sup>th</sup> respondent was directed to avoid causing nuisance to his neighbours and to approach the authorities concerned for obtaining requisite permission. Likewise the complainants were directed to approach the Grama Panchayat and other statutory

authorities to find a solution to their problem. As such, further action in the matter is to be taken by the Panchayat.

7. Learned Standing Counsel for the Panchayat submitted that that 8<sup>th</sup> respondent has not been granted permission for functioning a religious place by the Panchayat or the District Administration. The Panchayat conducted an inspection of the 8<sup>th</sup> respondent's building and found that the second floor is covered with roofing sheets. As no permission was obtained for such construction/renovation, notice was issued to the 8<sup>th</sup> respondent, requiring him to produce copies of the permissions, and remove the boards of the Devasthanam erected on the building. The 8<sup>th</sup> respondent did not reply to the notice or remove the board or the roofing sheets. As per instruction received, the 8<sup>th</sup> respondent is still conducting poojas and rituals at odd hours causing public nuisance, which is a punishable offence under Section 290 of Indian Penal Code. According to the counsel, it is difficult for the Panchayat to take action in the matter as



Panchayat is not empowered to gather intelligence information and take follow up action. Therefore, it is for the police and the revenue authorities to address the grievance of the local residents.

8. Learned counsel for the 8<sup>th</sup> respondent submitted that the allegations in the writ petition are baseless and motivated by personal animosity. The 8<sup>th</sup> respondent has dedicated a floor of his house for conducting poojas of Bhramarambika and Vishnumaya, the deities worshipped by his forefathers. The place where the poojas are conducted is a Devasthanam and not a temple. The 8th respondent's friends and family members alone are attending the poojas conducted by him. As such, it is not a place of public worship. The poojas are conducted following the Shaktheyam ritualistic method using pancha makaram, viz; liquor, fish, meat, mudra and midhunam. Out of this, the first four are called pratyaksham and the fifth is personal to the person conducting the ritual. The above form of worship is an essential part of the 8<sup>th</sup> respondent's religious belief and cannot be interfered with in view of the

guarantee under Articles 25 and 26 of the Constitution of India.

9. It is contended that the prohibition under Prevention of Cruelty to Animals Act will not apply since, killing of animals in the manner required by a religion or community is not an offence under Section 28 of the Act. The prohibition under Section 3 of the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is also not attracted, since the place and the precinct where birds and animals are sacrificed is a Devasthanam and not a Temple. In support of this contention, reference is made to the definition of the terms 'precincts' and 'temple' at Sections 2(a) and (c) of the Act.

10. According to the counsel, the 8<sup>th</sup> respondent is not required to obtain permission from the District Administration, as mandated in the Manual of Guidelines, since he is conducting the religious activities inside his pooja room. It is submitted that Ext.P2 notice was meant to be circulated among friends and relatives and is not issued for the purpose of canvassing devotees.

11. India, with its centuries old history, culture and religion, has brought in enactments to prevent and prohibit objectionable ritualistic practices like Sati, human sacrifice and child marriage. No doubt, Article 25 of the Constitution grants all persons the right to freely profess, practice and propagate religion. A careful reading of Article 25 shows that the above mentioned freedom is subject to public order, morality, health and the other provisions of Part III. As such, the freedom and right under Article 25 are subservient to the right to life and personal liberty guaranteed under Article 21. Being so, the expression of religious freedom by the conduct of poojas and rituals by the petitioner cannot result in the deprivation of the right to decent living guaranteed to the other residents.

12. The Apex Court in **Sardar Syedna Taher Saifuddin Saheb v. the State of Bombay** [AIR 1962 SC 853] had occasion to consider the question whether the practices that are an essential part of religious belief can be interfered. The petitioner therein was the 51<sup>st</sup> Dai-ul-Mutlaq and head of the Dawoodi Bohra Community. He

challenged the constitutionality of the Bombay Prevention of Excommunication Act, 1949 on the ground that the provisions of the Act infringe Articles 25 and 26 of the Constitution, by interfering with his right to excommunicate a member of the community. Even though the petition was allowed by majority, the following observation assumes relevance;

“There may be religious practices of sacrifice of human beings, or sacrifice of animals in a way deleterious to the well being of the community at large and in such event it is open to the State to intervene by legislation, to restrict or to regulate to the extent of completely stopping such deleterious practices.”

13. The fine difference between a religious practice and an essential and integral part of a practice of religion was considered by the Constitution Bench in **Dr. M. Ismail Faruqui and Ors. v. Union of India and Ors.** [(1994) 6 SCC 360]. Paragraph 78 of the judgment being contextually relevant, is extracted hereunder;

“78. While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such

religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially.”

Thereafter, in **N. Adithayan v. Travancore Devaswom Board** [(2002) 8 SCC 106], while holding that Non-Brahmins could be appointed as priests in particular temples and appointment of only Brahmins as poojaris cannot be said to be an essential part of religion, the Apex Court highlighted the vision of the founding fathers of the Constitution to liberate the society from blind and ritualistic adherence to superstitions, sans reason or rational basis.

14. The following erudite opinion of Justice R.F. Nariman in the famous Sabarimala Case throws more light on the issue. (**Indian Young Lawyers Association and Ors v. State of Kerala and Ors.** [(2019) 11 SCC 1]);

“176.6. It is only the essential part of religion, as distinguished from secular activities, that is the subject-matter of the fundamental right. Superstitious beliefs which are extraneous, unnecessary accretions to religion

cannot be considered as essential parts of religion. Matters that are essential to religious faith and/or belief are to be judged on evidence before a court of law by what the community professing the religion itself has to say as to the essentiality of such belief. One test that has been evolved would be to remove the particular belief stated to be an essential belief from the religion-would the religion remain the same or would it be altered? Equally, if different groups of a religious community speak with different voices on the essentiality aspect presented before the Court, the Court is then to decide as to whether such matter is or is not essential. Religious activities may also be mixed up with secular activities, in which case the dominant nature of the activity test is to be applied. The Court should take a common-sense view and be actuated by considerations of practical necessity."

15. Going by the precedents and on a proper understanding of the rights under Article 25 and the liberty guaranteed under Article 21, the contention that, animal sacrifice being an essential and integral part of the 8<sup>th</sup> respondent's religious belief and practice, cannot be interfered with even if it causes nuisance to others, has to be rejected. As opined by none other than Dr. B.R. Ambedkar, true religious practice should be guided by

reason, equality and humanistic values, rather than blind adherence to traditions. All unhealthy, unscientific and deleterious practices are to be prevented, even if it is done in the name of religion.

16. In order to overcome the prohibition against animal sacrifice in the Kerala Animals and Birds Sacrifices Prohibition Act, 1968, the contention urged is that the Devasthanam, where animals are sacrificed, is not a temple. For this, reliance is placed on the definition of 'temple' in Section 2(c) of the Act which reads as under;

“ “temple” means a place by whatever designation known, used as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right by, the Hindu community or any section thereof, as a place of public religious worship.”

Going by the definition, a place used for public religious worship, by whatever designation known, will be a temple if it is dedicated to or used by the Hindu community, or by any section thereof. A perusal of Ext. P2 notice shows that the 8<sup>th</sup> respondent himself has described the place where

he is conducting poojas as a temple and had solicited participation of devotees interested in obtaining the blessings of the deities. Having issued a notice in the nature of Ext. P2, the 8<sup>th</sup> respondent cannot contend that the place of worship is not a temple and there is no public participation. As such, the prohibition under Section 3 of the Kerala Animals and Birds Sacrifices Prohibition Act would apply and contravention would invite the penalty prescribed under Section 6(1) of the Act.

17. The State Government has issued the Manual of Guidelines in order to equip the District Administration to deal with communal violence, to promote communal harmony, ensure peaceful co-existence and bring about unity in diversity. Clause 23 of the Guidelines reads as under;

“23. Any construction of religious place should be made only with prior approval of the District Authorities and at the earmarked place. Cases of construction of unauthorised religious places should be dealt with severely under existing laws. Negligence on the part of the District Administration in implementing this direction



should be seriously viewed and the guilty dealt with.”

The clause makes it evident that no religious place can be constructed without prior approval of the District Authorities and cases of construction of unauthorised religious places are to be dealt with severely. The allegation is that, in spite of being informed about the construction of a religious place without prior permission, the District Authorities and the police are refusing to take action. It is disconcerting to note the weak-kneed and jittery approach of the police and revenue authorities, when illegalities committed under the garb of religion are brought to their notice. The authorities should be mindful of the fact that the laws of this country are equally applicable to all citizens and no special treatment can be meted out to any person on religious grounds.

18. The Panchayat is also at fault for having failed to act after seeking explanation, finding the petitioner to have effected construction in violation of the provisions of the Kerala Panchayat Raj Act and the Panchayat Building Rules. The photographs produced along with the writ

petition shows water mixed with blood and remnants of rituals flown and dumped on the road. Section 219K of the Panchayath Raj Act prohibits the flowing of waste water or any other filth to any portion of the road, except to a drain or cesspool. The law being thus, the Panchayath cannot abdicate its responsibility.

Based on the above findings, the writ petition is ordered as under;

(i) Respondents 2 and 3 shall cause an inquiry to be conducted through the 4<sup>th</sup> respondent and if the 8<sup>th</sup> respondent is found to have constructed a place of worship and conducting poojas and rituals, with members of the public participating in it, immediate action shall be taken to stop the activities.

(ii) The 5<sup>th</sup> respondent shall conduct an inquiry and if slaughter of animals and birds is taking place in the precincts of the 8<sup>th</sup> respondent's building, appropriate action under the Kerala Animals and Birds Sacrifices Prohibition Act shall be taken.

(iii) Having issued notice alleging violation of the provisions of the Kerala Panchayat Raj Act and the Building Rules, the Panchayat shall take appropriate follow up action in the matter.

Sd/-

**V.G.ARUN,**

**JUDGE**

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**APPENDIX OF WP (C) 15433/2022**

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE PHOTOGRAPHS OF THE TEMPLE SITUATED ON THE TOP FLOOR OF THE RESIDENTIAL BUILDING OF THE 8TH RESPONDENT.
- Exhibit P2 THE TRUE COPY OF THE NOTICE OF THE ABOVE SAID FESTIVAL.
- Exhibit P3 THE TRUE COPY OF THE PHOTOS OF WASTE FILLED PUBLIC ROAD AS PER ONE SUCH RITUALS.
- Exhibit P4 THE TRUE COPY OF THE PETITION BEFORE THE PANCHAYAT ALONG WITH ANOTHER RESIDENCE SASI DATED 30-3-2022.
- Exhibit P4A THE RECEIPT DATED 30-4-2022 ISSUED FROM THE RESPONDENT PANCHAYAT.
- Exhibit P5 THE TRUE COPY OF THE QUESTIONNAIRE SUBMITTED AS PER RIGHT TO INFORMATION ACT DATED 6-4-2022.
- Exhibit P6 THE TRUE COPY OF THE REPLY FROM THE PANCHAYAT DATED 12.4.2022.
- Exhibit P7 THE TRUE COPY OF THE COMPLAINT TO THE STATION HOUSE OFFICE DATED 6.4.2022.
- Exhibit P8 THE TRUE COPY OF THE COMPLAINT TO THE REVENUE DIVISIONAL 8 OFFICER (3RD RESPONDENT) DATED 6-4-2022
- Exhibit P9 THE TRUE COPY OF THE PETITION TO THE DEPUTY SUPERINTENDENT OF POLICE, ALUVA (4TH RESPONDENT) DATED 9-4-2022.
- Exhibit P10 THE TRUE COPY OF THE PETITION FILED BY 19 PERSONS BEFORE THE 4TH RESPONDENT RURAL SUPERINTENDENT OF POLICE DATED 18-2-2022

RESPONDENT EXHIBITS

- Exhibit R8(a) TRUE COPY OF THE RECEIPT ISSUED BY THE POLICE

ON COMPLAINT OF THE 8TH RESPONDENTS WIFE  
DATED 24.12.2020

Exhibit R8(b) TRUE COPY OF THE RECEIPT ISSUED BY THE POLICE  
ON COMPLAINT OF THE 8TH RESPONDENT WIFE DATE  
27.12.2020

Exhibit R8(C) TRUE COPY OF THE CERTIFICATE OF INCORPORATION  
OF COMPANY DATED 22-07-2022.

RESPONDENT EXHIBITS

Exhibit R8(D) TRUE COPY OF THE ARTICLES OF ASSOCIATION  
DATED 15-07-2022.

RESPONDENT EXHIBITS

Exhibit R8(E) TRUE COPY OF THE COMMUNICATION OF ASSOCIATION  
OF COMPANY DATED 15-07-2022.