

# KERALA HIGH COURT

T. Krishnan

Vs

G.D.M. Committee

Original Petn. No. 314 of 1973

(V. Balakrishna Eradi, G. Viswanatha Iyer, K. Bhaskaran, T. Chandra-sekhara Menon and K.K. Narendran, JJ.)

15.11.1977

## JUDGEMENT

**Balakrishna Eradi, J. (for himself and on behalf of K. Bhaskaran, T. Chandrasekhara Menon and K. K. Narendran, JJ.)**

1. Kerala is justly famous for its numerous temples, churches, mosques and synagogues which exist side by side in perfect amity and mutual respect, catering to the spiritual needs of all sections of people belonging to different religious persuasions. Foremost amongst the Hindu Shrines in the State is the Sreekrishna Temple at Guruvayoor to which there is an incessant flow of many thousands of pilgrims from all parts of India throughout the year.

2. In 1971 the Kerala State Legislature enacted the Guruvayoor Devaswom Act, 1971 (Act 6 of 1971), hereinafter called the Act, avowedly to make provision for the proper administration of the Guruvayoor Devaswom. The petitioner, a Hindu, claiming to be a worshipper of the Guruvayoor Temple has filed this petition both in his individual capacity as well as in his capacity as the President of the Malabar Pradesh Kshethra Samrakshana Samithi which is a society registered under Societies Registration Act and having as its objects *inter alia* the reconstruction and renovation of Hindu temples which are in ruins, the adoption of necessary measures to ensure that temples are managed properly and administered correctly and the reorganisation and rejuvenation of Hindu society so as to enthuse in them proper interest in temple worship, rites and rituals. Permission has also been granted to the petitioner by this Court under Order 1 Rule 8 of the Civil Procedure Code to institute and maintain this writ petition in a representative capacity on behalf of the entire denomination consisting of the large section of the Hindu public having faith in temple worship and who are vitally interested in seeing that the affairs of the temple are administered in accordance with its customs and traditions and that its properties and funds are not diverted for purposes unconnected with the temple or with Hindu religious practices. The reliefs prayed for in the writ petition are that this Court should declare the Act and the Guruvayoor Devaswom (Amendment) Act, 1972 (Act 28 of 1972) and more particularly Sections 3, 4, 5 (3) (a), 5 (5), 6, 11, 14, 18, 20, 24 (3) (I) 29 and 32 (1) of the Act and Sections 2, 3 and 4 of Act 28 of 1972 as unconstitutional and void on the ground of

contravention of Articles 14 and 28 of the Constitution of India. There is also a prayer in the Original Petition that Resolution No. 31 of the Guruvayoor Devaswom Managing Committee (1st respondent) constituted under Section 3 of the Act - Ext. P-1 - resolving to grant a donation of Rs. 50,000/- from the temple funds to the "one lakh housing scheme" of the State Government is illegal and invalid. A further relief sought in the writ petition is that this Court should declare that the Renovation Executive Committee constituted or recognized under Section 32 of the Act is an illegally constituted body and that it has no legal authority to perform any acts in relation to the temple.

3. Before we proceed to set out in detail the contentions put forward by the petitioner in support of his challenge against the provisions of the enactments it will be convenient to narrate in brief the prior history relating to the administration of the Guruvayoor Temple. It is admitted on all sides that the Coraims right over the Temple was hereditarily vested jointly in the Zamoria Raja of Calicut and the Karanavan for the time being of the Mallisseri Illam at Guruvayoor. This fact is expressly recognised and specifically mentioned in the Preamble to the Act. That the Ooraimaship was vested jointly in the Zamorin Raja and the Karanavan of the Mallisseri Illam had also been declared by the Madras High Court in its judgment dated 1st November, 1889 in Appeal No. 35 of 1887. In the year 1926 the Madras Legislature passed the Madras Hindu Religious Endowments Act and it came into force on the 8th February, 1927. Shortly thereafter some of the worshippers of the temple filed a petition before the Hindu Religious Endowments Board constituted under the said Act complaining against alleged mismanagement of the affairs of the Temple by the hereditary trustees. On that petition the Board started an enquiry which finally resulted in a scheme of administration being settled for the Temple under Section 63 (1) of the said Act. Under that scheme the Board totally disregarded the rights of the Mallisseri Nambudiri to function as the hereditary trustee of the Temple and entrusted the day-to-day management of the institution solely to the Zamorin Raja as hereditary trustee subject to certain conditions regarding supervision by officers of the Board and other similar safeguards. The Karanavan of the Mallisseri Illam instituted O.S. No. 1 of 1929 in the District Court of South Malabar at Calicut under Section 63 (4) of the Hindu Religious Endowments Act, 1927 to amend the scheme settled by the Board by recognizing his due position as joint Ooralan of the Devaswom. The worshippers on whose petition the scheme had been framed by the Board instituted O.S. No. 2 of 1929 in the same Court contending that the Board had not incorporated sufficient safeguards in the scheme for ensuring the proper management of the institution and praying that the scheme should be amended by making provision for the appointment of additional non-hereditary trustees and placing the management in the hands of a Board of five trustees, three of whom were to be nominated by the Board. The District Court upheld the claim of Mallisseri Nambudiri to be a joint hereditary trustee of the Temple along with the Zamorin Raja and certain amendments were made in the scheme of administration settled by the Board, both for the purpose of providing for joint management by the Nambudiri and Zamorin Raja as cotrustees and also for inserting further safeguards to ensure good administration of the institution. Against the said decision of the District Court the Zamorin Raja filed A. S. Nos. 211 and 212 of 1930 before the Madras High Court. Those appeals were disposed of by a Division Bench as per an elaborate judgment dated 21st November, 1930. The learned Judges confirmed the decree of the District Court in so far as it recognised the right of Mallisseri Nambudiri to function as joint Ooralan (hereditary trustee) of the Temple and the modification effected in the scheme in this regard was upheld. Dealing with the provisions contained in the scheme settled by the Board which had been modified in certain respects by the District Court on the basis of the

contentions put forward by the worshippers that the public was dissatisfied with the management of the Temple and that there was a considerable body of persons feeling that the administration of the institution should not be left in the hands of the hereditary trustees without adequate and stringent safeguards, the learned Judges of the Division Bench while confirming the decision of the District Judge declining to make provision in the scheme for the appointment of three nonhereditary trustees, incorporated certain additional safeguards in the scheme with intent to enable the worshippers to maintain a close and effective watch on the manner of administration of the Devaswom by the trustees. One of the new provisions so incorporated in the scheme was that a public notice intimating the date and time of opening of the Bhandarams should be put up by the trustees sufficiently in advance so that those amongst the worshippers who cared to be present, may attend at the time of the opening and it was also made obligatory that the entries regarding the cash, jewellery etc. found as the contents of the Bhandarams should be attested at least by two of such members of the worshipping public.

4. Thereafter, till 1933 the management of the Temple was being carried on under the provisions of the scheme as finalised by the aforesaid decision of the Madras High Court. Subsequently, a suit - O.S. No. 1 of 1933 - was filed by some of the worshippers for modifying the above-mentioned scheme. As per the decree passed in that suit some slight modifications were effected in the aforesaid scheme by the District Court. Since then the administration of the Temple was being carried on under the scheme as so modified. This position continued even after Madras Act 2 of 1929 was replaced by the Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act 19 of 1951) which came into force on 30th September, 1951.

5. In 1965, the Commissioner, Hindu Religious and Charitable Endowments (Administration) Department filed O. P. No. 3 of 1965 in the court of the Subordinate Judge, Trichur under Section 62 (3) (a) of the Madras Hindu Religious and Charitable Endowments Act, 1951 praying that the court should be pleased to amend and modify the existing scheme for the Guruvayoor Temple on the lines indicated in a draft scheme submitted along with the said application. That petition was pending before the Subordinate Judge's Court at the time when the impugned statute was passed by the Kerala Legislature. In the meantime, a fire accident took place in the Temple in November, 1970 and a commission was appointed by the Government to go into the circumstances that led to the fire accident. It would appear that the commission in its report expressed the view that the accident had occurred due to prolonged neglect and indifference on the part of the management in the matter of maintenance and timely repairs. According to the stand taken in the counter-affidavit, the fire accident "brought home the need for immediate effective action" and hence the impugned statute was enacted.

6. The Zamorin Raja and Mallisseri Nambudiri in their capacity as hereditary trustees of the Temple had filed O. P. No. 812 of 1971 challenging the validity of the Act (Act 6 of 1971) on the ground that its provisions infringed their fundamental rights under clauses (b) and (d) of Article 26 of the Constitution of India. That contention was rejected by a Full Bench of three Judges of this Court as per the judgment reported, in *Kunhetan Thempuran v. State of Kerala*<sup>1</sup>. In that writ petition the main grievance of the petitioners therein was that their rights and privileges as hereditary trustees had been seriously and excessively interfered with by the statute by practically divesting them of any effective part in the management and administration of the religious institution and that this constituted an infringement of clauses (b) and (d) of Article 26 of the Constitution. The writ petition had not been filed by them in a representative capacity on behalf

of the denomination consisting of the worshippers of the Temple. The present writ petition originally came up for hearing before the Division Bench consisting of Gopalan Nambiyar, J. (as he then was) and Viswanatha Iyer, J. both of whom were members of the Full Bench that decided the earlier case in 1973 Ker LT 106 : (AIR 1973 Kerala 106 (FB)). By their order of reference dated 29th June, 1973 the learned Judges referred this case to a Full Bench observing that many of the important aspects that are sought to be urged in this writ petition had not been fully developed and presented before the Full Bench which heard the previous case and that hence it was felt necessary that all those points should be considered by a Full Bench. Since the present petitioner was not a party to the earlier writ proceeding which, as already observed, was not a representative action, the principle of *res judicata* is not attracted and there is no legal bar against his urging before this Court all the contentions raised in this writ petition. Pursuant to the aforementioned order of reference by the Division Bench the case was initially posted before a Full Bench of three Judges. Since it was found that a consideration of the contentions raised by the petitioner necessarily involves an examination of the correctness of the decision rendered by the earlier Full Bench (1973 Ker LT 106) : (AIR 1973 Kerala 106 (FB)), the case was referred to a larger Bench and accordingly it has come up before this Bench of five Judges.

7. To appreciate the points arising for consideration it will be convenient to refer briefly at this stage to the scheme and the salient provisions of the impugned Act. The object of the Act, as stated in the preamble is to reorganise, in the interests of the general public, the scheme of management of the affairs of the Guruvayoor Devaswom and to provide better administration therefor in supersession of the provisions of the scheme framed by the High Court of Madras in Appeals Nos. 211 and 212 of 1930 as subsequently modified by the District Court of South Malabar in O.S. No. 1 of 1933 on the basis of which the administration and management were hitherto being carried on by the hereditary trustees. Section 1 after mentioning the name of the Act states that the Act shall be deemed to have come into force on the 9th of March, 1971. The significance of the said date is that the Guruvayoor Devaswom Ordinance 1971 containing substantially the same provisions had been promulgated by the Governor of Kerala on 9-3-1971 and that Ordinance was being replaced by the Act.

8. Section 3 lays down that the administration, control and management of the

<sup>1</sup>1973 Ker LT 106 : (AIR 1973 Ker 106 (FB))

Devaswom shall be vested in a committee constituted in the manner specified in the next Section of the Act, that the said committee shall by the name of the "Guruvayoor Devaswom Managing Committee" be a body corporate and it shall have perpetual succession and a common seal and shall by the said name sue and be sued through the Administrator. Section 4 deals with the composition of the Committee. Sub-section (1) thereof lays down that the Committee shall consist of (a) the Zamorin Raja who shall be the Chairman, (b) the Karanavan for the time being of the Mallisseri Illam at Guruvayoor who shall be the Vice- Chairman, (c) the Administrator appointed under Section 14 who is to be an ex-officio member of the Committee, (d) the Chairman of the Guruvayoor Township Committee provided he is a person professing Hindu religion - ex-officio -, (e) the Tantri of the Temple - ex-officio -, (f) a representative of the Employees of the Devaswom nominated by the Government and (g) not more than 11 persons nominated by the Government of whom one shall be a Harijan. Sub-section (2) states that a person shall be disqualified for being nominated under clause (g) of sub-section (1), if (i) he does not profess the Hindu religion or (ii) he is an employee under the Government or the Devaswom or (iii) he is below 30 years of age or more than 70 years of age or (iv) he is engaged in any

subsisting contract with the Devaswom or (v) he is subject to any of the disqualifications mentioned in clauses (a), (b) and (c) of sub-section (3) of Section 5.

9. Sub-section (i) of Section 5 provides that a member nominated under clause (f) or clause (g) of subsection (1) of Section 4 shall hold office for a period of three years from the date of his nomination and shall be eligible for renomination. Sub-section (2) of Section 5 merely recognizes the right of any member of the Committee to resign his office by giving notice in writing thereof to the Government and it states that on such resignation being accepted by the Government the person shall cease to be a member. Sub-section (3) is an important provision. It states that the Government may by order remove from office a member nominated under clause (f) or clause (g) of sub-section (1) of Section 4 on any of the grounds mentioned in clauses (a) to (h) of the said subsection. Clauses (a) to (c) deal with disqualification by reason of unsoundness of mind declared by a competent court or adjudication as an insolvent or conviction for any offence involving moral turpitude. Clause (f) contains the usual provision for removal on the ground of absence for more than three consecutive meetings of the committee without valid or sufficient explanation. The grounds for removal mentioned in clauses (d), (e), (g) and (h) are respectively as follows :-

"(d) he has been guilty of corruption or misconduct in the administration of the Devaswom;

(e) his presence in the Committee is in the opinion of the Government, prejudicial to the interests of the Devaswom;

(g) he, being a legal practitioner, has acted or appeared on behalf of any person against the Devaswom in any legal proceeding;

(h) he ceases to profess the Hindu religion."

Sub-section (4) of Section 5 states that a member shall not be removed under sub-section (3) unless he has been given a reasonable opportunity of showing cause against his removal. Sub-section (5) declares that an order of the Government removing from office a member of the committee under sub-section (3) shall be final and shall not be liable to be questioned in any court of law.

10. Section 6 empowers the Government to issue a notification superseding the Committee for such period, not exceeding six months, as it may think fit, if the Government after making such enquiry as may be necessary is of opinion that the Committee is not competent to perform or makes default in performing the duties imposed on it under the Act or exceeds or abuses its powers. Sub-section (2) of Section 6 enjoins that before issuing such a Notification the Government shall communicate to the Committee the grounds on which they propose to take the action for its supersession, fix a reasonable time for the Committee to show cause against the proposal and consider its explanation and objections, if any. Sub-section (3) of Section 6 provides that where a Committee is superseded under the said Section the Government shall appoint a person in its service professing the Hindu Religion to exercise the powers and perform the functions of the Committee until the expiry of the period of supersession.

11. The next provision in the Act that is relevant is Section 10, clauses (a) to (g) whereof enumerate the duties of the Committee. Clause (a) states that the Committee shall, subject to the

custom and usage in the Temple, arrange for the proper performance of the rites and ceremonies in the Temple and the subordinate temples attached thereto in accordance with the dittam or scale of expenditure fixed in respect of them under the Madras Hindu Religious and Charitable Endowments Act. Clause (b) states that it shall be the Committee's responsibility to provide facilities for the proper performance of worship by the worshippers. Under clause (c) the Committee is invested with the duty to ensure the safe custody of the funds, valuable securities and jewellery and the preservation and management of the properties vested in the Temple. Clause (d) states that it shall be the duty of the Committee to maintain order and discipline and proper hygienic conditions in the Temple and the subordinate temples attached thereto and of proper standard of cleanliness and purity in the offerings made therein. A duty is cast on the Committee under clause (e) to ensure that the funds of the endowments of the Temple are spent according to the wishes so far as may be known of the donors. Clause (f) states that it shall be the duty of the Committee for payment of suitable emoluments to the salaried staff of the Devaswom. Clause (g) states in general terms that the Committee shall do all such things as may be incidental and conducive to the efficient management of the affairs of the Devaswom and the convenience of the worshippers.

12. Section 11 deals with the alienation of Devaswom properties. Subsection (i) thereof states that no movable property of a non-perishable nature which is in the possession of the Committee and the value of which is more than five thousand rupees and no jewellery shall be sold, pledged or otherwise alienated without the previous approval of the Government. Sub-section (2) lays down that no immovable property taken possession of by the Committee shall be mortgaged, sold or otherwise alienated except with the previous sanction of the Government. Dealing with the Committee's powers to borrow or lend money Section 12 provides that the Committee shall have no power to borrow money from or to lend money to any person except with the previous sanction of the Government. Thus the only inhibition placed in the way of alienations of movable or immovable properties belonging to the Devaswom and on either borrowing money on the credit of the Devaswom or lending its monies is that the Committee should have obtained either the 'previous approval' or the 'previous sanction' of the Government. No guidelines are contained in Sections 11 and 12 as to what principles or considerations are to weigh with the Government in the matter of granting the 'previous approval' or the 'previous sanction' referred to in those Sections.

13. Section 13 provides that the Committee shall annually submit to the Government through the Commissioner a report on the administration of the affairs of the Devaswom at such time as the Government may prescribe and that such report shall be forthwith published by the Committee in the prescribed manner and that it shall thereafter be also laid before the Legislative Assembly as soon as possible.

14. Chapter III of the Act consisting of Sections 14 to 20 deals with "Administration and Establishment". Section 14 states that the Government shall appoint an officer not below the rank of Deputy Collector or Deputy Commissioner appointed under the Madras Hindu Religious and Charitable Endowments Act and professing Hindu religion to be the Administrator for the Devaswom. It is laid down by Section 15 that the Administration shall be a full-time officer of the Devaswom and that he should not undertake any work unconnected with his office without the permission of the Committee. He is to be paid out of the Temple Fund such salary and allowances as the Government may fix in that behalf. It is further provided by the said Section

that a contribution shall be levied from the Temple Fund towards the leave allowances, pension and provident fund of the Administrator to the extent required by the rules for the time being in force and that the other conditions of service of the Administrator shall be such as may be prescribed by the Governor.

15. Section 16 states that notwithstanding the provisions in Sections 14 and 15 it shall be competent for the Government to appoint an officer of the Government not below the rank of Deputy Collector or Deputy Commissioner appointed under the Madras Hindu Religious and Charitable Endowments Act to be in additional charge of the office of the Administrator, pending appointment of the Administrator under Section 14 or when the office is temporarily vacant. The proviso incorporates a condition that the period of such additional charge shall not exceed one month. It is significant that under this provision it is open to the Government to appoint an officer not professing the Hindu religion to be in additional charge of the office of the Administrator of the Temple and during the period when he holds such charge he is competent to exercise all the powers and functions vested in the Administrator under the Act.

16. The powers and duties of the Administrator are enumerated in Section 17. Sub-section (i) thereof states that the Administrator shall be the Secretary to the Committee and its Chief Executive Officer and shall, subject to the control of the Committee have powers to carry out its decisions in accordance with the provisions of the Act and the Madras Hindu Religious and Charitable Endowments Act so far as they are applicable. Sub-section (2) provides that notwithstanding anything contained in sub-section (i) or in Section 3 (which vests the administration, control and the management of the Devaswom in the Committee) the Administrator shall be responsible for the custody of all the records and properties of the Devaswom. He has to arrange for the proper collection of the offerings made in the Temple. He is conferred power under subsection (4) (a) to grant licenses for the use of the lands of the Temple for a period not exceeding one year at a time or to lease out for a period not exceeding one year at a time the buildings of the Temple which are ordinarily let. He is also empowered to call for tenders for works or supplies and to accept such tenders when the amount or value thereof does not exceed five thousand rupees and to order for any emergency repairs the cost of which does not exceed five thousand rupees (clauses (b) and (c) of sub-section (4)). It is further provided by Section 18 that the Administrator may in cases of emergency direct the execution of any work or the doing of any act which is not provided for in the budget for the year the immediate execution or the doing of which is in his opinion necessary for the preservation of the properties of the temple and its endowments or for the service or safety of worshippers resorting to the Temple or for the due performance of the rites and ceremonies therein in accordance with the custom and usage in the Temple and to direct that the expenses of executing such work or doing such act shall be paid from the Temple Fund. Sub-section (2) of Section 18 enjoins that any action taken by the Administrator under sub-section (1) shall be forthwith reported by him to the Committee together with the reasons therefore.

17. Section 19 deals with the preparation of an Establishment Schedule and it states that the Administrator is to prepare and submit to the Committee a schedule setting forth the duties, designations and grades of the officers and employees who are to constitute the establishment of the Temple and embodying his proposals in regard to the salaries and allowances payable to them. The Committee under sub-section (2) is to forward to the Commissioner for his approval the schedule submitted to it by the Administrator with its recommendations thereon. Sub-section

(3) states that the Commissioner shall after considering the recommendations of the Committee approve such schedule either without modifications or with such modifications as he deems necessary and thereupon the schedule as approved by the Commissioner shall come into force. Sub-section (6) of Section 19 lays down that the creation of any new appointment carrying a salary of not less than two hundred rupees per mensem shall be subject to the previous sanction of the Government

18. The topic of appointment of officers and employees of the Temple is dealt with in Section 20. Under that provision appointments of all officers and employees of the Temple are to be made by a Board consisting of (a) the Commissioner who shall be the Chairman, (b) the Administrator, (c) an officer professing Hindu religion authorized by the District Collector, Trichur in that behalf and (d) two persons selected by the Committee from amongst its members. Sub-section (2) states that in exercising its power of appointment the Board shall follow such procedure as may be prescribed by the Government. It is to be noted that while under Section 3 the administration, control and the management of the Devaswom is vested in the Committee, the power of appointment of officers and employees of the Temple is vested in a totally different body, namely the Board referred to in this Section. Out of the five members constituting the Board three are officers of the Government and the remaining two alone are to be elected by the Committee, the composition of the Committee itself being such that there is an overwhelming predominance of the Government nominees.

19. Sections 21 to 23 comprised in Chapter IV deal with budget, accounts and audit. Under Section 21 the Administrator is to prepare every year in such manner and in such form as may be prescribed a budget estimate of the receipts and expenditure of the Devaswom for the following year and place it before the Committee which may approve it without modification or with such modifications as it may deem fit. Thereafter, the budget is to be submitted to the Government through the Commissioner before such date as may be fixed by the Government in that behalf. In so submitting the budget to the Government the Commissioner is to make his recommendations on the proposals. Sub-section (4) lays down that before sanctioning a budget, the Government shall satisfy themselves that adequate provision had been made therein for the maintenance of the prescribed working balance and meeting the liabilities of the Devaswom. The Government is empowered under sub-section (5) to modify any part of the budget so as to ensure that adequate provision is made for the maintenance of the prescribed working balance and for meeting the Devaswom liabilities. Provision is made in Section 22 empowering the Committee to submit in the course of any year a supplementary or revised budget to the Government through the Commissioner. Section 23 makes it obligatory that the Commissioner shall forward to the Government a copy of the audit report relating to the accounts of the Devaswom sent to him by the Auditor under Section 72 of the Madras Hindu Religious and Charitable Endowments Act together with a copy of the order passed by the Commissioner under sub-section (3) of Section 74 of the said Act.

20. Next we come to a very important provision contained in Section 24 which lays down that there shall be constituted a fund to be called "Sree Guruvayoor Temple Fund" and that the said Fund shall be vested in and be administered by the Committee. Sub-section (2) states that the Fund shall consist of (a) the income derived from the movable and immovable properties of the Devaswom, (b) any contributions by the Government either by way of a grant or by way of loan, (c) all fines and penalties imposed under the Act, (d) all recoveries under the Act and (e) any

other gifts or contributions made by the public, local authorities or institutions, other than the contributions referred to in sub-section (4) of Section 32, namely, contributions received by the Renovation Executive Committee for the specific purpose of renovation and improvement of the Temple. Sub-section (3) of the Section (Section 24) as originally enacted was in the following terms :-

"The fund may be utilised for any of the purposes prescribed under this Act and for all or any of the following purposes, namely :-

- (a) maintenance (including repairs and reconstruction), management and administration of the Temple, its properties and the temples subordinate thereto ;
- (b) training of archakas to perform the religious worship and ceremonies in the Temple and the temples subordinate thereto;
- (c) medical relief, water supply and other sanitary arrangements for the worshippers and the pilgrims and construction of buildings for their accommodation;
- (d) culture and propagation of the tenets and philosophy associated with the Temple:
- (e) any other work or undertaking for the purposes of the Devaswom authorized by the Government, so long as such authorization subsists; and
- (f) with the previous sanction of the Government, for the establishment and maintenance of, or the making of any grant or contribution to, any poor-home or other similar institution".

In the place of clause (f) which had originally stood as above, the following clause was substituted by Section 2 of the Guruvayoor Devaswom (Amendment) Act, 1972 :-

"(f) with the previous sanction of the Government,-

- (i) for the establishment and maintenance of, or the making of any grant or contribution to, any poor home or other similar institution;
- (ii) for the establishment and maintenance of any educational institution owned or managed by the Devaswom or in which the Devaswom has interest;
- (iii) for the making of any contribution to any religious institution; and
- (iv) for the making of any contribution to any fund instituted by the Government for the amelioration of the poor or for National Defense."

Clauses (a) to (e) have been left to remain as originally enacted. This Section brings about a radical departure from the established legal position relating to Hindu Religious Trusts that the properties of the Trust including the income derived therefrom belong to and stand vested in the deity and that the Ooralans or so-called trustees are only in the position of Managers invested with fiduciary functions. The direct consequence of this Section is to divest the deity of its ownership over the income derived from the movable and immovable properties of the Devaswom and also over the donations and offerings made by the worshipping public and to constitute all those into a Fund called the "Temple Fund" and vest the same in the Managing Committee. The Committee is also conferred power to utilize such Fund for any of the purposes enumerated in subsection (3), irrespective of any question as to the availability of a surplus. Clause (f) of sub section (3) permits the diversion of temple funds for purposes some of which

may be totally unconnected with the Temple and its affairs and may be purely secular in nature.

21. Section 25 lays down that the Government may call and examine the records of the Administrator, the Committee or the Commissioner to satisfy themselves about the regularity of such proceedings or the correctness, legality or propriety of any decision or order made therein and in case it appears to the Government that any such decision or order should be modified, annulled, revised or remitted for reconsideration, they may pass orders accordingly. Under this wide and unrestricted power every action taken or order passed by the Administrator, the Committee etc. even in relation to the day-to-day management or administration of the Temple is made subject to active superintendence and control by the Government. Sub-section (2) provides that pending the exercise of the revisional power conferred by Sub-section (i) the Government may stay the execution of any decision or order which is proposed to be revised by it. Section 26 empowers the Government to make rules to carry out the purpose of the Act and enumerates in sub-section (2) thereof the various matters in respect of which such rules may be made.

22. Section 27 states that the Committee may, subject to the approval of the Government, make regulations not inconsistent with the provisions of the Act and the Rules made thereunder to provide for the manner in which the duties imposed on it under the Act and its functions thereunder shall be discharged. It is stated in sub-section (2) that such regulations may in particular, provide for (a) conditions of service of the officers and employees of the Devaswom, (b) the observance of the rites and ceremonies and other usages in the Temple and the temples subordinate thereto and (c) any other matter for which regulations are required to be made for the purposes of the Act. It is laid down by Section 28 that the Committee shall be entitled to take and be in possession of all movable and immovable properties including jewellery records, documents and other assets belonging to the Devaswom. Provision is also made by the said Section that the Committee may requisition the assistance of the Collector of the District for the removal of resistance or obstruction in the matter of delivery of possession of Devaswom properties being taken.

23. Section 29 states that no suit, prosecution or other legal proceeding shall lie against the Government, the Commissioner, the Committee or any member thereof, or the Administrator or any person acting under the instructions of the Committee or authorized by it for anything which is in good faith done or intended to be done under the Act or the rules made thereunder. A total ban is thus imposed against the institution of any suits or other legal proceedings for challenging the actions of the Committee or its members as well as of the Commissioner and the State Government, the only condition for attracting the bar being that the action concerned should have been taken in good faith.

24. The next section that is relevant is Section 32 which provides for the constitution of a Renovation Executive Committee. Sub-section (1) thereof as it now stands after its substitution by the amending Act of 1972 (Act 28 of 1972) states that notwithstanding anything contained in the Act or in the Madras Hindu Religious and Charitable Endowments Act the Government may, if they consider it necessary in the interests of the affairs of the Temple and worshipping public to renovate or improve the Temple, by notification in the gazette, constitute a committee by name the Guruvayoor Devaswom Renovation Executive Committee. It is provided by subsections (1A) and (1B) that the Renovation Executive Committee shall consist of such number of members not exceeding thirty as may be appointed by the Government and that the Minister of the State of

Kerala in charge of Devaswoms shall be the President of the Renovation Executive Committee. Subsection (1C) states that the Government may by order nominate one of the members of the Renovation Executive Committee to be the Vice-President and Working Chairman of the Committee. It is stated in subsection (1F) that a person shall be disqualified for being appointed as a member of the Renovation Executive Committee if he does not profess the Hindu religion or if he is engaged in any subsisting contract with the Devaswom or the Renovation Executive Committee or if he is subject to any of the disqualifications mentioned in Clauses (a) to (c) of subsection (3) of Section 5. The Government may appoint one of the members of the Renovation Executive Committee to be its Secretary and his term of office and other conditions of service are to be such as may be prescribed by the Government (sub-sections (1G) and (1H)). Any casual vacancy in the office of the Working Chairman or a member or the Secretary of the Renovation Executive Committee shall be filled by the Government. The term of office of the members is fixed as three years. (Sub-sections (1I) and (1J)). Sub-section (1L) empowers the Government to remove from office the Working Chairman or a member or the Secretary of the Renovation Executive Committee if he is subject to any of the disqualifications mentioned in Clauses (a) to (c) and (h) of Sub-section (3) of Section 5 or has been guilty of corruption or any misconduct in the discharge of his functions or if his presence in the Renovation Executive Committee is, in the opinion of the Government, prejudicial to the interests of the Devaswom or detrimental to its object for which the Committee is constituted. Two other grounds for such removal contained in Clauses (d) and (e) of sub-section (1L) are absence by the concerned member for more than three consecutive meetings without satisfactory explanation and appearance against the Devaswom or the Renovation Executive Committee in any legal proceeding by a member of the Committee who is a legal practitioner. Sub-section (1M) provides that before action is taken by the Govt. for the removal of the Working Chairman or a member or the Secretary, he should be given a reasonable opportunity of showing cause against the proposed action.

25. Sub-section (2) of Section 32 states that the Renovation Executive Committee shall exercise such powers and discharge such functions in connection with the renovation and improvement of the Temple and shall follow such procedure as may be specified by the Government by notification in the gazette. Sub-section (3) provides that the Renovation Executive Committee shall constitute a fund to be called the "Sree Guruvayoor Renovation Fund" which shall be administered by the Renovation Executive Committee subject to such directions as the Government may from time to time issue. That Fund is to consist of all contributions received by the Renovation Executive Committee for the specific purpose of renovation and improvement of the Temple (Subsection (4)). It is laid down by subsection (5) that the fund shall be utilized for the renovation and improvement of the Temple and for incidental purposes including the maintenance of the necessary establishments and that any unspent amount of the fund shall be transferred to the Temple Fund. Sub-sections (6) to (8) state that the Government shall every year appoint an auditor to audit the accounts of the Renovation Executive Committee, that the remuneration of the auditor shall be paid from the Sree Guruvayoor Renovation Fund, that the Auditor shall submit his report to the Renovation Executive Committee and send a copy of it to the Government and that the Government may issue such directions thereon as they deem fit and the Committee shall comply with those directions. Sub-section (9) provides that the report of the auditor and the directions issued by the Government thereon shall be published in the prescribed manner.

26. Section 33 is a saving provision and it is in the following terms:-

"Nothing in this Act shall, save as otherwise expressly provided in this Act or the rules made thereunder, affect any honour, emolument or perquisite to which any person is entitled by custom or otherwise from or in the Devaswom, or its established usage in regard to any other matter."

27. Section 34 confers power on the Government to issue any order or to take such other action as may be found necessary for the purposes of removal of difficulties in giving effect to the provisions of the Act. It is laid down by Section 35 that the provisions of the Madras Hindu Religious and Charitable Endowments Act shall apply to the Devaswom except in respect of matters for which provisions have been made in the Act. By Section 36 it is declared that the scheme framed for the Temple by the High Court of Madras in Appeals Nos. 211 and 212 of 1930 or modified by the District Court. South Malabar in O.S. No. 1 of 1933 shall cease to apply to the Temple. That closes this brief survey of the various sections contained in the Act.

28. The petitioner contends that Sections 3, 4, 5 (3) (c), 5 (5), 11, 14,15,20, 24 (3). 29 and 32 of the Act are violative of Articles 25 (1) and 26 of the Constitution of India on the ground that they abridge and interfere with the right of the denomination consisting of the vast section of Hindus believing in temple worship to freely practice their religion and to maintain their religious institution, namely, the Guruvayoor Temple, and administer its properties in accordance with their beliefs and religious practices. According to the petitioner, the cumulative effect of the totality of the provisions contained in the Act is to completely take away the management and control of the institution and the administration of its properties and funds from the hands of the denomination and to vest it in the executive Government of the State. It is contended by the petitioner that it becomes evident on an examination of the scheme of the Act as disclosed by its provisions that under the guise of legislating for the better management of the Devaswom what the legislature has really done is to invest the Government with full and absolute control over the Devaswom and its religious as well as secular affairs with no right whatever to the denomination to call in question the acts of the Government and its officers and nominees. Elaborating this contention it is pointed out that though under the Act the administration of the Temple and all its properties is nominally to vest in a managing committee, in the context of the provisions contained in the Act conferring arbitrary powers on the Government to nominate all except three out of the seventeen members constituting the Committee, and to remove at the Government's pleasure any of the members so nominated or even to supersede the entire Committee, the said Committee can never be expected to function in an independent manner but only as an agency subservient to the Government. It is further urged on behalf of the petitioner that since the Section does not provide any guidelines as to the manner in which the persons are to be chosen by Government for nomination to the Committee the Government, which in the present democratic set up will necessarily be that of the political party that is in power for the time being, is left free to arbitrarily nominate as members of the Committee even persons whose political creed or personal belief may be such as is completely opposed to temple worship or even faith in God. It is pointed out that even amongst Hindus there are sections who have no faith in rituals and idol worship and who regard rituals and temple worship as based only on mere superstition and ignorance and as constituting an obstacle in the path of true spiritual progress. The petitioner urges that under Section 4 of the Act it is open to the Government to fill up the Committee with persons belonging to either of the aforementioned two categories and that nothing can be more dangerous and fatal for the continued existence of

the institution itself. Another point taken by the petitioners is that the denomination which is vitally concerned with the maintenance and administration of the Temple and its properties is completely left out of account in the matter of constituting the Managing Committee as no provision whatever is made for ascertaining the wishes of the denomination in regard to the choice of the members to be nominated to the Committee. Unlike in the case of other similar temples in the State governed by the provisions of the Madras Hindu Religious and Charitable Endowments Act 1951 or by the Travancore-Cochin Hindu Religious Institutions Act which contain adequate provisions enabling the members of the worshipping public to take prompt action by suit, appeal or application to check and correct any act of maladministration on the part of the persons in management, the denomination is completely deprived of the said valuable right which it had all along possessed in relation to the Guruvayoor Temple until the passing of the impugned Act. The Committee is not answerable in any manner to the denomination and none of its Acts can be called in question by members of the denomination by any process either before a civil court or before any other authority. According to the petitioner it is therefore futile to contend that the Committee is a body representing the denomination. Nowhere in the Act is any provision made for members of religious denomination to be consulted or heard by the Committee, the Administrator or the Govt. at least before important decisions are taken in respect of the most vital matters concerning the religious or temporal affairs of the Devaswom. The petitioner urges that such total deprivation of the rights of the denomination in the matter of maintaining and administering the Temple and its properties amounts to a flagrant violation of the fundamental rights guaranteed under Articles 25 and 26 of the Constitution. The petitioner submits that the impugned Act has the effect of transferring the administration of the Temple and its properties to the direct and active control of the executive Government in manifest violation of the guarantee enshrined in Article 26 of the Constitution and also of the principle of secularism which has been declared to be a basic feature of the Constitution in its preamble as recently amended. Another contention urged by the petitioner is that even though it is stated in Section 3 of the Act that the administration, control and management of the Devaswom is vested in a Committee an examination of the provisions contained in Chapter III of the Act would show that all the powers are really vested in the Administrator appointed by the Government over whom the Committee has no effective control. If the Committee is really intended to be in charge of the administration of the Devaswom the power to appoint the Administrator should have been vested in it but neither the said power nor any disciplinary control over the Administrator is conferred on the Committee. It is further pointed out by the petitioner that even the power to appoint the officers and employees of the Temple is not given to the Committee but, instead, it is vested in a separate body, namely, the Board constituted under Section 20. of the five members of that Board three are full-time officers of the State Government and only two members are to be elected by the Committee. The petitioner contends that the aforementioned provisions of the Act clearly go to show that the constitution of the Committee is only an extensible facade to camouflage the investiture of all the effective powers in the controlling hands of the executive Government.

29. Serious objection is taken by the petitioner to the provision contained in Section 24 of the Act regarding the constitution of the fund called "Sree Guruvayoor Temple Fund" and the declaration that the said fund shall be vested in the managing Committee. It is urged that both under custom as well as under the law governing Hindu Religious Trusts the properties and funds of the Guruvayoor Temple inclusive of the recurring income from its immovable properties and the offerings made by the worshipping public belong to the deity and any attempt to divest the deity

of such proprietary right constitutes a serious interference with the fundamental rights of the denomination under Articles 25 and 26 of the Constitution. The petitioner submits that it is an essential part of the religious practice of the denomination that the immovable and movable properties belonging to the Temple and also the offerings made by the devotees in cash and kind shall be vested in the deity and that those assets shall be preserved and utilised as such for the purposes of the Devaswom as sanctioned by usage. Very serious objection is taken by the petitioner to the provision contained in Clause (f) of sub section (3) of Section 24 which authorises the Committee to effect a diversion of the trust funds with the sanction of the Government for the purposes mentioned therein, some of which are totally unconnected with the Temple. Such diversion of trust funds for secular purposes unconnected with the Temple is contended to be wholly contrary to the established custom, traditions and usage of the Temple. It is also pointed out that under the aforesaid provision a diversion of the trust fund is permitted irrespective of whether or not any surplus is available after meeting all the requirements of the Devaswom and that this is completely opposed to the well-established principle of cy pres which has all along been considered to be applicable in respect of such trusts. On this ground also it is Contended that Section 24 (3) (f) in so far as it empowers the State Government to sanction the diversion of trust funds for secular purposes unrelated to the Temple is violative of Articles 25 (1), 26 (b) and (d) of the Constitution.

30. Strong attack is also levelled by the petitioner against Section 32 of the Act which provides for the constitution of a Renovation Executive Committee as a separate body wholly independent of the Guruvayoor Devaswom Managing Committee and not answerable to the latter in any manner. Against the provisions of Section 32 laying down the mode of constitution of the Renovation Executive Committee and prescribing the precarious nature of its tenure, depending as it does on the pleasure of the executive Government, the petitioner has urged the same contentions as have been put forward against the provisions of Sections 3 and 4 relating to the Managing Committee. In addition, it is urged that unlike in respect of the Managing Committee where there is at least an attempted camouflage of the real seat of all control, in the case of the Renovation Executive Committee the controlling hand of the Government emerges into the open in the provision contained in sub-section (1B) of Section 32 that the Minister of the State of Kerala in charge of Devaswom shall be the President of the Renovation Executive Committee. That committee may consist of as many as thirty members all of whom are to be appointed by the Government. Neither of the two hereditary trustees nor the Tantri of the Temple need be on this committee. Except for stating that a person shall be disqualified for being a member of the committee if he does not profess the Hindu religion or if he is engaged in any subsisting contract with the Devaswom or is subject to any of the disqualifications mentioned in Clauses (a), (b) and (c) of Section 5 (3), no guidelines whatever are contained in the Section as to how the members of the Renovation Executive Committee are to be chosen by the Government. It is pointed out by the petitioner that like in the case of the Managing Committee there is no provision whatever for ascertaining the wishes of the denomination in the matter of choice of members to the Renovation Executive Committee also and the denomination is left without any remedy to check and correct any maladministration of funds by the Renovation Executive Committee. Another point urged by the petitioner is that the work of renovation and improvement of the Temple is an integral part of administration and management of the Devaswom and hence there is no Justification to set up an independent committee for the said purpose and to authorise it to collect funds on behalf of the Devaswom and to expend such funds without even any reference to the Managing Committee which is the body statutorily vested with the duty of administering and

managing the trust. The petitioner further contends that all contributions received from the members of the public for the purposes of renovation and improvement of the Temple constitute part of the trust fund belonging to the deity and Section 32 in so far as it empowers such funds to be collected and expended by a body other than the Committee which is purported to be placed in charge of the administration of the trust is clearly violative of religious freedom guaranteed to the denomination under Articles 25 and 26 of the Constitution. Finally it was urged that in singling out the Guruvayoor Devaswom and the worshipping public who are devotees of Lord Guruvayoorappan for discriminatory and hostile treatment by denying to the denomination the elementary right to participate in the administration of the Temple and to take proceedings before court whenever found necessary for ensuring that there is no mismanagement of the institution, by placing the institution and its properties virtually under the arbitrary control of the executive Government by a process of nationalisation of the Temple as it were in contravention of the principle of secularism enshrined in the preamble to the Constitution, by divesting the deity of its proprietary right over the temple funds and transferring such right to the Managing Committee, by empowering the Government to divert the temple funds for secular purposes unconnected with the temple in total disregard of the usage and custom obtaining in the institution and the wishes of the donors and by abrogating the principle of cy pres by permitting the diversion of funds irrespective of the availability of any surplus there has been a clear violation of the principle of equality enshrined in Article 14 of the Constitution. Refuting the stand of the State that Guruvayoor Devaswom being a unique institution there is justification for a classification it is submitted by the petitioner that there are other equally unique and rich temples in Kerala like Sree Dharma Sastha Temple at Sabari Mala and the Bhagavathy Temple at Chottanikkara which also attract large numbers of pilgrims from all over India. According to the petitioner if the true purpose was to safeguard the Devaswom against mismanagement by the hereditary trustees, adequate provisions are contained in the Madras Hindu Religious and Charitable Endowments Act to deal with such situations. It is further contended by the petitioner that the impugned provisions of the Act which deprive the denomination of all its valuable rights in relation to the maintenance and administration of the Temple and which authorize the diversion of temple funds for secular purposes after divesting the deity of the proprietary right over such funds have no rational nexus whatever with the avowed object and purpose of the enactment and those provisions are therefore bad on the ground of arbitrary discrimination. The petitioner submits that even if a classification of the Guruvayoor Temple can be said to be justified on the ground of its uniqueness for purposes of making special provisions for its management, the said ground of classification has no rational nexus whatever with the real object and purpose effectively achieved by the impugned provisions of the statute namely to take over to Government control the management of the Devaswom and its properties. There is also an allegation in the petition that the Act is a colorable piece of legislation and that under the ostensible purpose of better management of the Devaswom what has been done by the legislature is to enable the Govt. to get absolute and unfettered control over the Devaswom and its funds with authority to utilise the funds of the Temple for secular purposes, which, though considered laudable by the State may be totally unconnected with the Temple.

31. The respondents have sought to sustain the validity of the impugned provisions of the Act by contending that they are reasonable provisions enacted with the sole object and purpose of ensuring the proper administration of the Temple and its properties in the larger interests of the general public. It is stated that the Sree Krishna Temple at Guruvayoor is a unique institution having all India importance and that on account of various factors the management of the

Devaswom was in a most unsatisfactory state and there were persistent demands from among the public that Government should put an end to the mismanagement of the Temple and its properties by the trustees. A high level committee appointed by the Government to go into the affairs of the Temples in Kerala had also recommended that some special provisions for effective supervision of the management of the famous Temple in Guruvayoor were badly needed and that necessary steps in that regard should be taken by the Govt. There was a fire accident in the Temple in November, 1970 and a Commission appointed by the Government to go into the circumstances that led to the fire accident had submitted a finding that the occurrence of the fire was almost entirely due to the prolonged neglect and indifference on the part of the management in the matter of maintenance and timely repairs of the Temple buildings. According to the respondents, the provisions contained in the Madras Hindu Religious and Charitable Endowments Act, 1951 and the scheme of management framed for the temple were found to be inadequate to ensure proper management of the institution. The Commissioner, Hindu Religious and Charitable Endowments Department had filed O. P. No. 3 of 1965 in the Sub- Court, Trichur praying for an amendment of the scheme settled in A. S. Nos. 211 and 212 of 1930 of the Madras High Court as modified by the District Court, South Malabar in O.S. No. 1 of 1933 but final orders in that matter had not been passed by the Court even by March, 1971. It is averred in the counter affidavit of the respondents that the fire accident of the Devaswom in 1970 brought home the need for immediate effective action and hence the Guruvayoor Devaswom Ordinance, 1971 was promulgated by the Governor of Kerala on 9th March, 1971 and that was subsequently replaced by the Act. It is submitted by the respondents that having regard to the unique nature of the Temple which attracts pilgrims in thousands from all parts of India there was need to enact special provisions for its proper administration and this classification is fully justified. The petitioner's allegation that the Temple and its worshippers have been arbitrarily singled out in violation of Article 14 of the Constitution is stoutly denied by the respondents. According to the submission of respondents none of the provisions of the Act has interfered with the religious freedom guaranteed to the denomination under Articles 25 and 26 of the Constitution. It is said that the provisions of the Act provide only for the management of the secular affairs of the Temple and do not interfere with the religious affairs thereof which are enjoined to be continued to be performed in accordance with the custom and usage obtaining in the Temple. The further case of the respondents is that the provisions of the Act far from interfering with the rights of the denomination, safeguard their interests by providing for proper management of the Temple and its properties. The contention of the petitioner that the Act confers on the Government absolute powers of management over the Temple is denied in the counter-affidavit. It is submitted by the respondents that simply because some of the members of the managing Committee are nominated by the Government it cannot be said that the Temple has been taken under Government control. The counter affidavit proceeds to state that the Managing Committee constituted under Section 3 is not subject to influence by the Government and that the Administrator appointed under Section 14 is subject to the supervision and control of the Managing Committee. The petitioner's contention that the Managing Committee is a limb of Government and that it is impossible for the Committee to resist a direction from the Government is refuted in the counter-affidavit as incorrect. A further plea taken by the respondents is that the Managing Committee constituted under the Act is a body representing the denomination and hence there is no substance in the petitioner's contention that the denomination has been completely deprived of its right to administer the institution and that the management of the temple is vested by the statute in a different secular authority. It is also said that the provisions of the Act only regulate the administration management and control of the properties

of the Devaswom in consonance with the provisions contained in Article 26 (d) of the Constitution. In answer to the challenge raised by the petitioner against the validity of Section 24 of the Act it is stated in the counter-affidavit that the utilisation of the temple funds for the purposes enumerated in clause (f) of Sub-section (3) of the said Section cannot be said to be opposed to the custom and usage of the institution and it will not constitute any breach of trust. Dealing with the attack made by the petitioner against the resolution Ext P-1 sanctioning a donation of Rs. 50,000/- towards the one lakh housing scheme of the State Government, it was submitted on behalf of the respondents that the Government has not granted and does not also hereafter propose to grant sanction for implementing the said resolution passed by the Managing Committee and that hence it is unnecessary to go into the question of validity of the said resolution. Regarding Section 32 which provides for the constitution of the Renovation Executive Committee it is stated by the respondents that the creation of such a separate body was felt by the legislature to be necessary in view of the fact that very substantial works of renovation and reconstruction of the Temple buildings had to be undertaken at enormous expense for repairing the damage caused by the fire accident and for prevention of recurrence of such mishaps in future. Finally it is submitted on behalf of the respondents that the provisions of the impugned Act are modelled on the lines of those enacted by the Orissa Legislature in the Shri Jagannath Temple Act 1955 (Orissa Act, 11 of 1956) and the Rajasthan Legislature is the Nathdwara Temple Act, 1959 (Rajasthan Act 13 of 1959) and since the validity of both these enactments has been tested and upheld by the Supreme Court the challenge raised by the petitioner that the impugned Act violates Articles 25 and 26 of the Constitution is devoid of any merit.

32. The scope and extent of the rights conferred by Articles 25 and 26 of the Constitution are now well settled by the decisions of the Supreme Court. Article 25, as its language indicates, secures to every person, subject to public order health and morality, a freedom not only to entertain such religious belief as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper and to propagate and disseminate his ideas for the edification of others. Sub-clause (a) of clause (2), however, saves the power of the State to make laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and sub-clause (b) reserves the State's power to make laws providing for social reform and social welfare even though they might interfere with religious practices. The fundamental right conferred by this Article is subject only to the above restrictions which the Article itself has imposed.

33. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is thus subject to State regulation imposed to secure order, public health and morals of the people. What sub-clause (a) of clause (2) of Article 25 contemplates is not State regulation of the religious practices as such which, unless they run counter to public health or morality, are protected but of activities which are really of an economic, commercial or political character though they may be associated with religious practices. Though a religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being, it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress. The guarantee under Article 25 protects not only the

freedom of religious opinion but also acts done in pursuance of a religion and this is made clear by the use of the expression 'practice of religion' in the said Article. It is not correct to state that under clause (2) (a) of Article 25 all secular activities which may be associated with religion but do not really constitute an essential part of it are amenable to State regulation. If the tenets of any particular religious sect 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 daily recital of sacred texts or oblations to the sacred fire etc. all these would be regarded as parts of religion and the mere fact that they involve 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). That Article 25 (2) (a) contemplates is not regulation by State of religious practices as such, the freedom of which is guaranteed by the Constitution except when they run counter to public order, health and morality, but regulation of activities which are economic, commercial or political in their character though they are associated with religious practices. (see *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Tirtha Swamiar of Sri Shirur Mutt*<sup>2</sup>, at pages 289 and 290).

34. Under Article 26 every religious denomination or section thereof has the guaranteed right to establish and maintain institutions for religious and charitable purpose and to manage in its own way all affairs in matters of religion. Rights are also

<sup>2</sup> AIR 1954 SC 282

given to such denomination or a section of it to acquire and own movable and immovable properties and to administer such properties in accordance with law. In regard to affairs in matters of religion the right of management given to religious denomination is a guaranteed fundamental right which no legislation can take away. However, as regards administration of property which a religious denomination is entitled to own and acquire, it has the right to administer such property only 'in accordance with law' meaning thereby that the State can regulate the administration of trust properties by means of laws validly enacted. But it is important to remember that under Article 26 (d) it is the religious denomination itself which has been given the right to administer its property in accordance with any law which the State may validly impose. Hence a law which takes away the right of administration altogether from the religious denomination and vests it in any other secular authority would amount to violation of the right guaranteed by Article 26 (d). (See *Ratilal Panachand Gandhi v. State of Bombay*<sup>3</sup>, at pages 391 and 392). As already noticed, religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines. Under Article 26 (b) a religious denomination enjoys complete autonomy in the matter of deciding as to what rights and ceremonies are essential according to the tenets of the religion and no outside authority has any jurisdiction to interfere in such matters - See *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Tirtha Swamiar of Sri Shirur Mutt*<sup>4</sup>, and *Digyadarsan Rajendra Ramdassji Varu v. State of Andhra Pradesh*<sup>5</sup>, at page 187. Hence it is not open to restrict or prohibit the performance of such rites or ceremonies under the guise of regulating the administration of the trust estate. The scale of expense to be incurred in connection with such religious observances is a matter of administration of property belonging to the religious institutions and if the expenses under these heads are likely to deplete the endowed properties or affect the stability of the institution, proper control can be exercised by the statutory agencies as the law may provide. The distinction between matters of religion and those of secular

administration of religious properties may at times appear to be very thin ; but in cases of doubt the court should take a commonsense view and be actuated by considerations of practical necessity. (*Ratilal Panachand Gandhi v. State of Bombay*<sup>6</sup>, at page 392).

35. A religious sect or denomination has the undoubted right guaranteed by the Constitution to manage its own affairs in matters of religion and this includes the right to spend the trust property or its income for the religious purposes and objects indicated by the founder of the trust or established by the usage obtaining in a particular institution. To divert the trust properties or funds for purposes which a statutory authority or official or even a court considers expedient or proper, although the original objects of the founder can still be carried out, is an unwarrantable encroachment on the freedom of religious institutions in regard to the management of their religious affairs. A statute cannot therefore empower any secular authority to divert the trust money for purposes other than those for which the trust was created as that would constitute a violation of the right which a religious denomination has under Articles 25 and 26 of the Constitution to practice its religion and to manage its own affairs in matters of religion. The State can step in only when the trust fails or is

<sup>3</sup> AIR 1954 SC 388

<sup>5</sup> AIR 1970 SC 181

<sup>4</sup> AIR 1954 SC 282

<sup>6</sup> AIR 1951 SC 388

incapable of being carried out either in whole or in part - See AIR 1954 Supreme Court 388.

36. In this context it is relevant to bear in mind the historical background which led to the inclusion of Articles 25 to 30 in the Chapter on fundamental rights in the Constitution. The said background has been most succinctly explained by Khanna J. in para. 75 of the judgment of the Supreme Court in *The Ahmedabad St. Xaviers College Society v. State of Gujarat*<sup>7</sup> at page 1413 which we shall extract:

"Before we deal with the contentions advanced before us and the scope and ambit of Article 30 of the Constitution, it may be pertinent to refer to the historical background. India is the second most populous country of the world. The people inhabiting this vast land profess different religions and speak different languages. Despite the diversity of religion and language, there runs through the fabric of the nation the golden thread of a basic inmate unity. It is a mosaic of different religions, languages and cultures. Each of them has made a mark on the Indian polity and India today represents a synthesis of them all. The closing years of the British rule were marked by communal riots and dissensions. There was also a feeling of distrust and the demand was made by a section of the Muslims for a separate homeland. This ultimately resulted in the partition of the country. Those who led the fight for independence in India always laid great stress on communal amity and accord. They wanted the establishment of a secular State wherein people belonging to the different religions should all have a feeling of equality and nondiscrimination. Demand has also been made before the partition by Sections of people belonging to the minorities for reservation of seats and separate electorates. In order to bring about integration and fusion of the different sections of the population the framers of the Constitution did away with separate electorates and introduced the system of joint electorates, so that every candidate in an election should have to look for support of all sections of the citizens. Special safeguards were guaranteed for the minorities and they

were made a part of the fundamental rights with a view to instil a sense of confidence and security in the minorities. Those provisions were a kind of a charter of rights for the minorities so that none might have the feeling that any section of the population consisted of first-class citizens and the others of second-class citizens. The result was that minorities gave up their claims for reservation of seats. Sardar Patel, who was the Chairman of the Advisory Committee dealing with the question of minorities, said in the course of his speech delivered on February 27, 1947:

"This Committee forms one of the most vital parts of the Constituent Assembly and one of the most difficult tasks that has to be done by us is the work of this committee. Often you must have heard in various debates in British Parliament that have been held on this question recently and before when it has been claimed on behalf at the British Government that they have a special responsibility-a special obligation- for protection of the interests of the minorities. They claim to have more special interest than we have. It is for us to prove that it is a bogus claim, a false claim and that nobody can be more interested than us in India in the protection of our minorities. Our mission is to

<sup>7</sup>(AIR 1974 SC 1389)

satisfy every interest and safeguard the interests of all the minorities to their satisfaction. (The Framing of India's Constitution, B. Shiva Rao, Select Documents, Vol. II, P. 66).'

It is in the context of that background that we should view the provisions of the Constitution contained in Articles 25 to 30. The object of Articles 25 to 30 was to preserve the rights of religious and linguistic minorities, to place them on a secure pedestal and withdraw them from the vicissitudes of political controversy. These provisions enshrined a befitting pledge to the minorities in the Constitution of the country whose greatest son had laid down his life for the protection of the minorities. As long as the Constitution stands as it is today, no tampering with those rights can be countenanced. Any attempt to do so would be not only an act of breach of faith, it would be constitutionally impermissible and liable to be struck down by the courts. Although the words secular state are not expressly mentioned in the Constitution, there can be no doubt that our Constitution-makers wanted establishment of such a state. The provisions of the Constitution were designed accordingly. There is no mysticism in the secular character of the State. Secularism is neither anti-God, nor pro-God; it treats alike the devout, the agnostic and the atheist. It eliminates God from the matters of the state and ensures that no one shall be discriminated against on the ground of religion. The Constitution at the same time expressly guarantees freedom of conscience and the right freely to profess, practise and propagate religion. The Constitution-makers were conscious of the deep attachment the vast masses of our country had towards religion, the sway it had on their minds and the significant role it played in their lives. To allay all apprehensions of interference by the legislature and the executive in matters of religion, the rights mentioned in Articles 25 to 30 were made a part of the fundamental rights and religious freedom contained in those Articles was guaranteed by the Constitution."

Thus the real purpose and intendment of Articles 25 and 26 is to guarantee especially to the religious minorities in this country the freedom to profess, practise and propagate their religion, to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion to own and acquire properties and to administer such properties in accordance with law subject only to the limitations and restrictions indicated in those Articles. No doubt, the freedom guaranteed by these two Articles applies not merely to religious minorities but to all persons (Article 25) and all religious denominations or sections thereof (Article 26). But. in interpreting the scope and content of the guarantee contained in the two Articles the court will always have to keep in mind the real purpose underlying the incorporation of these provisions in the fundamental rights chapter. When a challenge is raised before a court against the validity of any statute as contravening the fundamental rights guaranteed under Articles 25 and 26 it is from the above perspective that the court will approach the question and the tests to be applied for adjudging the validity of the statute will be the same irrespective of whether the person or denomination complaining about the infringement of the said fundamental right belongs to a religious minority or not.

37. In adjudging the validity of a statute which is impugned on the ground that it abridges the fundamental rights of the petitioner the object or purpose of the law is irrelevant. It is the effect brought about by the totality of the provisions of the Statute on the concerned fundamental right and its exercise that will have to be examined by the court. The true test is whether the impugned provisions have the effect of taking away or abridging the fundamental rights. As observed by the Supreme Court in *Bennett Coleman and Co. Ltd. v. Union of India*, AIR 1973 Supreme Court 106 at pages 119 and 120, it is the effect of the law upon the right which attracts the jurisdiction of the court to grant relief.

38. It is also well settled that if the denomination had lost its right to administer the religious institution and its properties prior to the Constitution by a valid law they cannot regain that right on the plea that that law contravenes the right guaranteed under Article 26 of the Constitution. If the right to administer the religious institution never vested in the denomination or had been validly surrendered by it or had otherwise been effectively lost to it prior to the Constitution, Article 26 cannot be successfully invoked by the denomination in such a case. Article 26 (c) and (d) do not operate to create rights in any denomination or its section which it never had : they merely safeguard and guarantee the continuance of rights which such denomination or section had. (See *Durgah Committee, Ajmer v. Syed Hussain Ali*, AIR 1961 Supreme Court 1402 at page 1406 and *State of Rajasthan v. Sajjanlal Panjawat*, AIR 1975 Supreme Court 706 at page 715).

39. In the case before us a contention was urged by the learned Advocate appearing for the 1st respondent - The Managing Committee of the Devaswom represented by the Administrator - that the denomination consisting of the general body of worshippers was not having any right in relation to the administration of the Guruvayoor Temple as on the date of the coming into force of the Constitution. We see no force at all in this contention. At the time when the Constitution came into force the management of the Temple was being carried on by the hereditary trustees in accordance with the provisions of the scheme settled by the High Court of Madras in Appeal Nos. 211 and 212 of 1930 as later modified by the District Court of South Malabar in O.S. No. 1 of 1933 and also in conformity with the relevant provisions contained in the Madras Hindu Religious and Charitable Endowments Act. We have already adverted to the fact that the

aforementioned scheme itself came to be framed as a result of proceedings initiated by certain worshippers on whose petition the Madras Hindu Religious Endowments Board started the enquiry which culminated in the framing of the scheme. Further, in the scheme that was finally settled by the Madras High Court, sufficient safeguards were incorporated at the instance of the worshippers to ensure that there would be no maladministration of the Temple and its funds by the trustees and it was even provided that the 'Bhandarams' of the temple should be opened only after previous public notice to the worshippers and only in the presence of the worshippers who cared to be present and that at least two of the worshippers should attest the formal entries relating to the actual receipts in cash and kind obtained from the 'Bhandarams'. The provisions of the Madras Hindu Religious Endowments Act, 1926 which governed the Temple at the time of the commencement of the Constitution fully recognized the rights of the worshippers to intervene for the purposes of preventing mismanagement. Section 9 (9) of that Act defined the expression "person having interest" in the case of a temple as a person who is entitled to attend at the performance of worship or service in the temple and who is in the habit of attending such performance. It was mandatory under the provisions of that Act to give notice to 'persons interested' (worshipping public) and to hear their representations before any action of consequence, such as the framing of a scheme, the sanctioning of alienations of temple properties etc. was taken by the Board in relation to the temple and its properties. (See Sections 57, 67, 76 etc.) Right was also specifically reserved to 'persons interested' to move the court for modifying a scheme already settled in respect of a temple (Section 65) and also to institute suits in the competent court praying for reliefs of the nature mentioned in Section 92, Civil Procedure Code (Section 73). In the case of the Guruvayoor Temple it has already been seen that the worshipping public had been asserting and exercising their rights under the Madras Hindu Religious Endowments Act and the scheme itself was originally framed by the Board on the petition filed by some worshippers. Not being satisfied with the provisions contained in the scheme framed by the Board, certain worshippers, 24 in number, instituted O.S. 2 of 1929 in the District Court of South Malabar to amend the said scheme. A. S. No. 212 of 1930 was an appeal filed in the Madras High Court by the hereditary trustee Zamorin Raja against the decree passed in that suit. It cannot therefore be said on the facts of this case that the denomination had either surrendered or lost its rights in relation to the administration of the Temple and its properties by any process known to law prior to the commencement of the Constitution.

40. We shall now proceed to examine the consequences brought about by the provisions of the impugned Act either severally or cumulatively in relation to the rights of the denomination falling within the scope of Articles 25 and 26 of the Constitution. Section 3 which states that the administration, control and management of the devaswom shall be vested in a Committee called "The 'Guruvayoor Devaswom Managing Committee" constituted in the manner provided in Section 4 is by itself unobjectionable provided that the Committee constituted under Section 4 can reasonable be regarded as a body representative of the denomination. But, as per section 4, the committee is to consist of (a) the two hereditary trustees, namely, the Zamorin Raja and the Karanavan of the Mellisseri Illam (b) three ex-officio members, namely, the Administrator appointed under Section 14. the Chairman of the Guruvayoor Township Committee in case he is a person professing the Hindu religion, and the Tantri of the Temple (c) a representative of the employees of the Devaswom, nominated by the Government and (d) not more than eleven persons nominated by the Government of whom one shall be a Harijan. Thus, out of the seventeen members who may constitute the Committee as many as twelve members are persons nominated by the Government and even out of the remaining five persons two are Government

officers because it is the District Collector, Trichur who is ex-officio Chairman of the Guruvayoor Township Committee. The section does not provide any guidelines as to how the eleven persons mentioned in clause (g) of sub-section (1) are to be chosen for nomination by the Government. Sub-section (2) merely enumerates the grounds of disqualification for nomination. Under clause (i) of that sub-section a person who does not profess the Hindu religion is disqualified for nomination. In other words, the persons to be nominated must be persons professing the Hindu religion. We find there is considerable force in the contention of the petitioner that a person who 'professes' Hindu religion need not be believer in temple worship and that on the other hand he may be completely opposed to the practice of idol worship. It is well known that there are sections of Hindus whose schools of thought and philosophy do not consider idol worship, rituals and ceremonials as necessary or even conducive to the spiritual progress of men. There are also political creeds or social theories which openly condemn such forms of worship as being based on mere superstition and ignorance. Many persons, who are born Hindus and who may be said to profess Hinduism solely because they have not openly renounced the Hindu faith by any recognised process, may ardently believe in such political or social ideologies which do not view temple worship with favour. There is nothing in Section 4 which precludes the Government from nominating such persons to be members of the Managing Committee under clause (g) of sub-section (1) of Section 4. Quite apart from the serious prejudice and peril that will be caused to the interests of the institution by reason of such a step, it will not be possible to say that such a Committee constituted with members belonging to the aforementioned types of philosophical or political persuasion represents the religious denomination consisting of the Section of the Hindu public having faith in temple worship. We have already referred to the definition of the expression 'person having interest' contained in Section 9 (9) of the Madras Hindu Religious Endowments Act, 1926. The identical definition is also contained in Section 6 (ii) of the Madras Hindu Religious and Charitable Endowments Act, 1951 and it furnishes a useful guideline as to who alone can be considered as a member of the religious denominations in relation to a temple.

41. Though it was contended by the petitioner that the power of nomination of the members of the Managing Committee who will virtually be functioning as the trustees of the Temple should not be vested in the executive Government we are not prepared to go to the extent of holding that the conferment of the power of nomination on the Government is by itself illegal. We may, however, observe that in the light of the recent amendment of the preamble to the Constitution emphasising the secular character of the State it is desirable that the legislature should consider whether the power to nominate the members of the Committee should not be conferred on an independent statutory body other than the State Government with sufficient guidelines furnished to it for ensuring that the nominations will be effected in such a way as to be truly representative of the denomination consisting of the worshipping public.

42. Under Section 4 (1) of the Act the legislature has conferred on the State Government the power of nomination of the members of the Managing Committee without sufficient guidelines, thereby rendering it possible for the Government to completely by-pass the denomination and appoint a Committee consisting largely or even wholly of persons who may not have any faith at all in temple worship. It is also difficult to understand why in respect of the management of a single Temple it has been considered necessary or expedient to constitute such a large Committee consisting of as many as seventeen members. Under the Travancore-Cochin Hindu Religious Institutions Act the Travancore Devaswom Board and the Cochin Devaswom Board which are

entrusted with the task of administering all the temples in the erstwhile Travancore and Cochin territories respectively are to consist only three members each. Even in the draft scheme which was filed on behalf of the Department in O. P. No. 3 of 1965 of the Sub-Court. Trichur the proposal was only for the appointment of a Board consisting of the two hereditary trustees and three non-hereditary trustees. The purpose of ensuring efficient and proper administration of the Devaswom would undoubtedly be better served by a compact committee consisting of persons having faith in the deity and real interest in the affairs of the institution. However that may be, we are of opinion that the provisions of Section 4 (1) of the Act must be held to be bad for the reason that the power of nomination conferred on the Government is naked and arbitrary without any safeguard being provided for ensuring that the Committee will be a body representing the denomination. The right to administer the Temple being vested in the denomination any statutory provision which completely ignores the denomination in the matter of setting up the Committee to administer the religious institution belonging to the denomination will necessarily be violative of Article 26 of the Constitution.

43. Strong reliance was placed by the learned Additional Advocate General appearing on behalf of the respondents on the decisions of the Supreme Court in *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan*, AIR 1963 Supreme Court 1638. and *Raja Bira Kishore Deb v. The State of Orissa*, AIR 1964 Supreme Court 1501, and it was contended that in both these decisions the Supreme Court has upheld the validity of similar provisions contained in the Rajasthan Nathdwara Temple Act and in the Shri Jagannath Temple Act empowering the concerned State Government to constitute committees of management for the administration of Hindu Temples. In AIR 1964 Supreme Court 1501 the challenge was directed against the provisions of the Shri Jagannath Temple Act, 1954 (Orissa Act 11 of 1955) on the ground that they were violative of fundamental rights of Raja of Puri under Articles 14, 19 (1) (f) and 31 of the Constitution. The appeal which came up for decision before the Supreme Court arose out of a writ petition filed by the Raja of Puri in the High Court of Orissa. The case put forward by the petitioner therein was that the Shri Jagannath Temple was his private property and that the impugned Act which deprived him of his property was unconstitutional in view of Article 19 of the Constitution. In the alternative, it was contended that the petitioner had sole right of the superintendence and management of the temple, that the said right could not be taken away without payment of compensation and in as much as the Act took away that right without any compensation it was hit by Article 31 of the Constitution. A further plea put forward by the petitioner was that the right of superintendence was 'property' within the meaning of Article 19 (1) (f) and the impugned provisions of the statute which deprived him of his property constituted unreasonable restrictions which were not saved under Article 19 (5). The Act was further attacked on the ground that it was discriminatory and that therefore hit by Article 14 of the Constitution in as much as the temple had been singled out for special legislation even though there was a general law in force in the State of Orissa with respect to Hindu religious endowments, namely, the Orissa Hindu Religious Endowments Act. Reliance was also vaguely placed by the petitioner on Articles 25, 26, 27 and 28 of the Constitution to invalidate the Act. The High Court repelled almost all the contentions of the petitioner and held that the Act was valid and constitutional except for the provision contained in Section 28 (2) (f) thereof which was held to be invalid. Against the said decision the Raja of Puri had filed the appeal before the Supreme Court reiterating his contention that the entire Act was unconstitutional as violating Articles 14, 19, 25, 26 and 31 of the Constitution. Dealing with the contention put forward by the appellant based on Article 26 the Supreme Court observed as follows (at p. 1510):-

"In the first place besides saying in the petition that the Act was hit by Article 26 there was no indication anywhere therein as to which was the denomination which was concerned with the Temple and whose rights to administer the Temple have been taken away. As a matter of fact the petition was filed on the basis that the appellant was the owner of the Temple which was his private property. There was no claim put forward on behalf of any denomination in the petition. Under these circumstances we are of opinion that it is not open to the appellant to argue that the Act is bad as it is hit by Article 26 (d)."

The High Court had gone into the merits of the contention based on Articles 25 and 26 and repelled it on the ground that since the temple was meant for all Hindus and the entire Hindu community had therefore to be treated as the denomination for the purpose of Article 26 and since the committee constituted, under the Act consisted entirely of Hindus the management still remained with the denomination and hence Articles 25 and 26 of the Constitution could not be said to have been infringed. The correctness of the said view was canvassed before the Supreme Court but their Lordships observed that in as much as no foundation has been laid in pleadings for any contention based on Article 26 (d) it was wholly unnecessary for the High Court to consider the said question. The Supreme Court therefore declined to go into the question and observed as follows :-

"In view of the defective state of pleadings however we are not prepared to allow the argument under Art 26 (d) to be raised before us and must reject it on the sole ground that no such contention was properly raised in the High Court." The question having been thus specifically excluded from consideration by the Supreme Court it is not possible to regard the above decision as an authority holding that the provision contained in the statute impugned therein relating to the constitution of the committee of management did not infringe Article 26 (d) of the Constitution. As already noticed, the writ petition which gave rise to the appeal before the Supreme Court was not a proceeding filed on behalf of the denomination but, on the other hand, it was instituted by the Raja of Puri asserting that the Temple was his private property. There was therefore no scope at all in that case for considering the question whether the fundamental rights of the denomination had been infringed by the provisions contained in the impugned enactment for the constitution of the committee of management. It is also worthy of mention that unlike in Section 4 of the Guruvayoor Devaswom Act. Section 5 of the Shri Jagannath Temple Act contained clear guidelines as to how the members of the managing committee were to be selected for nomination by the State Government from amongst the different categories of the sevaks or worshippers.

44. The decision in *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan*, AIR 1963 Supreme Court 1638, is also clearly distinguishable. The challenge in that case was against the provisions of the Rajasthan Nathdwara Temple Act, 1959 (Act 13 of 1959). *Tilkayat Govindlalji* who was the main appellant before the Supreme Court contended that the idol of Shri Shrinathji in the Nathdwara Temple and all the property pertaining to it were his private properties and as such the

State Legislature was not competent to pass the Act. In the alternative, it was urged that even if the Nathdwara Temple was to be held to be a public temple and the Tilkayat the Mahant or Shebait in charge of it, as such Mahant or Shebait he had a beneficial interest in the office of the high priest as well as in the properties of the temple and the provisions of the impugned Act were violative of Article 19 (1) (f) of the Constitution. In addition, it was contended that even if the temple was held to be a public temple the Act would be invalid because it contravened the fundamental rights guaranteed to the denomination under Articles 25 (1) and 26 (b) and (c) of the Constitution. The denomination supported the Tilkayat's case that he was the proprietor of the temple who was solely entitled to manage the temple and its properties. The Supreme Court elaborately went into the historical background of the temple and the course of events in relation to the management of its properties which ultimately led to the passing of the Act. Their Lordships found that even if the Tilkayat had originally any absolute rights of management, those rights had been taken away by a Firman issued by the Rana of Udaipur on 31st December, 1934 which laid down that the Shrine of Shrinathji was a public temple, that the Tilkayat Maharaj was merely a custodian, manager and trustee of the property of the Shrine and that the Udaipur Darbar had absolute rights to supervise the administration of the temple and ensure that the property dedicated to the Shrine was only used for the legitimate purposes of the institution. It was further found that 'under the said Firman the Udaipur Darbar had reserved to itself the right to depose any Tilkayat Maharaj for the time being in office if in its absolute discretion such Maharaj was considered unfit. Their Lordships pointed out that at the relevant time when the Firman was issued, the Maharana of Udaipur was an absolute monarch in whom vested all the legislative, judicial and executive powers of the State and that hence any order issued by such a Ruler had the force of law and it would govern the rights of the parties affected thereby. The rights of the Udaipur Darbar had devolved on the State of Mewar and subsequently on the State of Rajasthan as its successor State. It was against the background of this factual and legal position that obtained in relation to the temple that the Supreme Court proceeded to examine the constitutionality of the impugned provision of that Act. The situation that prevailed in relation to the Shri Nathdwara Temple on the date of coming into force of the Constitution was that the Government of the United State of Rajasthan had the absolute right to supervise the administration of the temple and to determine who should be in charge of its administration and management and no rights were recognised as existing in the denomination in regard to the said matter. Even in the appeal before the Supreme Court the denomination did not put forward any case that it had the right to maintain or administer the temple nor was there any complaint about the infringement of any such right belonging to it. On the other hand, the sole plea put forward by the denomination was that the right of the Tilkayat to manage the temple had been unlawfully taken away by the Act. This is clear from the following observations contained in paragraph 61 of the judgment of the Supreme Court at page 1661:-

"The only right, which according to the denomination, has been contravened is the right of the Tilkayat to manage the property belonging to the temple. It is urged that throughout the history of this temple, its properties have been managed by the Tilkayat and so, such management by the Tilkayat amounts to a religious practice under Article 25(1) and constitutes the denomination's right to manage the affairs of its religion under Article 26 (b)."

The Supreme Court rejected that contention pointing out that after the Firman of 1934 the

Tilkayat did not have any absolute right of management over the temple and that he was only in the position of a custodian or trustee subject to the supervision and control of the Darbar. On this ground it was further held that the mere right of management of properties possessed by the Raja of Puri was a purely secular matter and it cannot be regarded as a religious practice so as to fall under Article 25 (1) or as amounting to affairs in matter of religion within the meaning of Article 26. Their Lordships accordingly rejected the contention put forward by the denomination that the Act infringed the rights guaranteed to it by Articles 25(1) and 26 (b) of the Constitution.

45. The factual and legal position occupied by the denomination in relation to the Guruvayoor Temple is entirely different. The denomination has all along been recognised as being the body in whom ultimately rests the right to maintain and administer the Temple and the hereditary trustees have been functioning only as its representatives, their actions being liable to be called in question by the denomination either by proceedings before the statutory authorities constituted under the Madras Hindu Religious Endowments Act or before the civil court by the institution of suits as provided in the said Act.

46. Further, Section 5 of the Nathdwara Temple Act which provided for the constitution of the Nathdwara Temple Board contained guidelines as to how the members of the Board should be nominated by the Government. Referring to this matter the Supreme Court observed as follows in paragraph 64 at page 1662 :-

"It is, however, argued that by the constitution of the Board in which the administration of the property now vests is not the denomination, and since the administration is now left to the Board, the denomination has been wholly deprived of its right to administer the property. It is remarkable that this plea should be made by the representatives of the denomination who in their writ petition were prepared to support the Tilkayat in his case that the temple and the properties of the temple were his private property. That apart, we think that the constitution of the Board has been deliberately so prescribed by the legislature as to ensure that the denomination should be adequately and fairly represented on the Board. We have already construed Section 5 and we have held that Section 5 (2) (g) requires that the members of the Board other than the Collector of Udaipur District should not only profess Hindu Religion but must also belong to the Pushti-Margiya Vallabhi Sampradaya. It is true that these members are nominated by the State Government, but we have not been told how else this could have been effectively arranged in the interests of the temple itself. The number of the devotees visiting the temple runs into lacs, there is no organization which comprehensively represents the devotees as a class; there is no register of the devotees and in the very nature of things, it is impossible to keep such a register. Therefore, the very large mass of Vallabh's followers who constitute the denomination can be represented on the Board of management only by a proper nomination made by the State Government, and so, we are not impressed by the plea that the management by the Board constituted under the Act will not be the management of the denomination. In this connection, we may refer to Clause (1) of the Firman which vested in the Darbar absolute right to supervise the management of the property. As a successor-in-interest of the Darbar, the State of Raiasthan can be trusted to

nominate members on the Board who would fairly represent the denomination. Having regard to all relevant circumstances of this case, we do not think that the legislature could have adopted any other alternative for the purpose of constituting the Board. Therefore, we must hold that the challenge to the validity of the Act on the ground that it contravenes Articles 25 (1), 26 (b) and 26 (d) must be repelled."

The facts of the present case are materially different from those which the Supreme Court had to consider in the Tilkayat's case. In respect of the Nathdwara Temple the State of Rajasthan as the successor-in-interest of the Udaipur Darbar was already vested with absolute rights of supervisions and control over the administration of the institution as on the date of the coming into force of the Constitution and the denomination had no subsisting rights in regard to the said matter. Secondly, Section 5 of the Nathdwara Temple Act contained sufficient guidelines to ensure that the committee to be constituted thereunder by the State Government would be a body truly representative of the members of the denomination consisting of Hindus belonging to the Pushti-Margiya Vallabhai Sampradaya belonging to all parts of India. Any such guidelines are totally absent in Sections 3 and 4 of the impugned Act. The decision of the Supreme Court in Tilkayat's case (AIR 1963 Supreme Court 1638) being therefore clearly distinguishable it is of little assistance to the Advocate-General in the matter of sustaining the constitutionality of Section 4 of the Act now under challenge before us.

47. In view of our conclusion that the provisions contained in Sections 3 and 4 of the Act regarding the constitution and composition of the Managing Committee are violative of Article 26 of the Constitution it is really unnecessary for us to consider the attack levelled by the petitioner against Section 5 which deals *inter alia* with the subject of removal from office of the members of the Committee. It was strongly urged on behalf of the petitioner that even if it is constitutionally permissible to empower the Government to constitute the Committee of management for a religious institution it is not contemplated by Articles 25 and 26 that the executive Government should retain and exercise active control over the administration of a religious institution. According to the petitioner, once the Committee is constituted by the Government it should thereafter be left to some other competent authority, Tribunal or Court to exercise necessary supervision and control over the functioning of the Committee and there should be no direct or indirect involvement by the Government in regard to the said matter. It is pointed out that the position that obtains under Section 5 of the Act is that the members of the Committee are to hold office only during the arbitrary pleasure of the Government since the Government is empowered to remove a member from office if, in its subjective opinion, the presence of such member in the Committee is prejudicial to the interest of the Devaswom. Sub-section (5) also lays down that such an order of removal of a member passed by the Government is final and shall not be liable to be questioned in any court of law. Section 6 of the Act which provides for dissolution and supersession of the Committee is also challenged by the petitioner on identical grounds. Here too, the Government is empowered to supersede the Committee for a period not exceeding six months if in its opinion, the Committee is not competent to perform or makes default in performing the duties imposed on it by the Act or exceeds or abuses its powers. It is, however, provided by sub-section (2) of Section 6 that before issuing a notification superseding the Committee the Government shall communicate to the Committee the grounds on which they propose to take the action, fix a reasonable time to show cause against the proposal and consider its explanations and objections, if any. No remedy is provided by the Act against

the order of supersession passed by the Government. We are of opinion that there is force in the petitioner's contention that the aforementioned provisions contained in Sections 5 and 6 have the undoubted effect of curbing the independence of the Committee and converting it into a body subservient to the executive Government. The powers of removal and supersession conferred on the Government are naked and absolute in character and the member who is removed or the superseded Committee is left without any remedy since even a suit is barred by Section 29 of the Act. Had it been necessary to consider the constitutionality of these provisions ( Section 5 (3) and Section 6) we would have been inclined to uphold the petitioner's contention that these provisions offend the principle of secularism that is now firmly enshrined in the preamble to the Constitution as forming a basic feature of our constitutional structure by the recent amendment effected in the preamble by the Constitution (Forty-second Amendment) Act. But, as already pointed out, since we have held Section 4 to be invalid it is unnecessary for us to pronounce upon the validity of the impugned provisions contained in Sections 5 and 6.

48. Then we come to Sections 11 and 12 which deal with the subject of alienation of Devaswom property and borrowing and lending powers of the Committee. Section 11 states that no movable property of a non-perishable nature which is in the possession of the Committee and the value of which is more than five thousand rupees and no jewellery shall be sold or pledged without the previous approval of the Government. It is further provided by sub-section (2) thereof that no immovable property taken possession of by the Committee shall be mortgaged, sold or otherwise alienated except with the previous sanction of the Government. Under the law governing Hindu religious trusts the properties of the temple, whether moveable or immovable can be alienated only if the proposal to alienate is supported by Devaswom necessity or by manifest benefit to the institution. The complaint of the petitioner against the provision in Section 11 is two-fold. Firstly, it is contended that the Section confers power on the Government to grant previous approval authorizing the Committee to alienate the movable or immovable properties of the Devaswom irrespective of the existence of any justifying necessity or benefit. Secondly, the petitioner submits that it is not permissible for the executive Government of a secular State to directly involve itself in matters of routine administration of a religious institution. We have no reason to think that the impugned provision has been enacted by the legislature otherwise than actuated by a genuine desire to ensure that the properties of the Devaswom are not improperly alienated by the Committee. But the provision as naturally enacted does suffer from the vice of leaving it to the absolute and unguided discretion of the Government to sanction alienations of movable and immovable properties belonging to the Temple without even insisting on any prerequisite condition regarding the existence of supporting necessity or benefit. This is clearly prejudicial to the interests of the denomination which has the right to maintain and preserve the institution and its properties in accordance with the doctrines of law and the usages applicable to institution in relation to the alienation of trust properties. If the properties of the institution are to be alienated without any justifying necessity or benefit the very continued existence of the institution will itself be imperilled and in that sense it has an intimate bearing on the right to maintain the institution conferred on the denomination by Article 26 (a) of the Constitution. More important in relation to the right of the denomination is the circumstance that an order passed by the Government sanctioning an alienation of Devaswom properties is not amenable to any kind of challenge before any forum at the instance of the denomination, even a suit being barred under Section 29 of the Act. We have to uphold the petitioner's contention that the provisions contained in Section 11 in so far as they confer arbitrary power on the Government to sanction alienations of Devaswom properties even in the absence of any justifying necessity or benefit and leave the

denomination without any remedy to question the order passed by the Government are violative of Article 26 (a), (b) and (d) of the Constitution.

49. Section 12 states that the Committee shall have no power to borrow money from or to lend money to any person except with the previous sanction of the Govt. Excepting for the aspect already pointed out by us, namely, that the secular Govt. is not expected to intimately involve itself in the administration of a religious institution we do not see any other objectionable feature in this Section.

50. Then we pass on to Sections 14 and 15 which may be considered together. Section 14 lays down that the Government shall appoint an officer not below the rank of Deputy Collector or Deputy Commissioner appointed under the Madras Hindu Religious and Charitable Endowments Act to be the Administrator for the Devaswom. Section 15 states that the Administrator shall be a full-time officer of the Devaswom, that he shall be paid out of the Temple Fund such salary and allowances as the Government may fix and the conditions of the service of the Administrator shall be such as may be prescribed by the Government. When under the scheme of the Act the administration, control and the management of the Devaswom are to vest in the Managing Committee constituted under Section 3 and the underlying assumption is that the Committee represents the denomination which is possessed of the fundamental right to maintain and administer the Temple the power to appoint the Administrator who is to be the Secretary of the Committee and its chief executive officer should ordinarily vest in the Committee. The power to appoint the Administrative officer is a necessary concomitant of the power of administration, control and management which is conferred on the Committee under Section 3. Section 14 in so far as it deprives the Committee of the crucial power to appoint its own Secretary who is also to be the chief executive officer of the Temple and confers such power on the secular Government undoubtedly makes a serious inroad into the fundamental right guaranteed to the denomination under Article 26 (a), (b) and (d) (for the purposes of this discussion we are assuming that the Committee constituted under Section 3 represents the denomination). It may also be mentioned in this connection that even though Section 17 mentions that the Administrator shall be subject to the control of the Committee, Section 26 (2) (a) empowers the Government to make rules providing for the manner of exercise of control by the Committee over the actions of the Administrator. Rules 3 and 4 of the Guruvayoor Devaswom Rules, 1971 are the relevant rules framed by the Government in this regard. They are in the following terms:-

"3. Power of the Committee over the actions of the Administrator:- It shall be competent for the Committee to call for and examine any papers connected with any action of the Administrator and give such directions to the Administrator, in accordance with the provisions of the Act and these rules, as the Committee may consider necessary.

4. Administrator to carry out the decision of the Committee:- The Administrator shall take steps to implement the decisions of the Committee and in the event of failure without adequate reasons, the Committee may bring the matter to the notice of the Government and the Government shall take such action as it deems necessary against the Administrator."

It is obvious from a mere reading of the above rules that the Committee is left without any

effective control over the Administrator and he is answerable only to the Government by whose order he is appointed and who alone is vested with the power to take disciplinary action against him. The Administrator being an officer of the Devaswom it should be left to the Committee to regulate his conditions of service and to exercise effective control over his work and conduct inclusive of full powers to take disciplinary proceedings for any misconduct. In so far as Section 15 (4) violates the above principle it interferes with the denomination's right to administer the Temple under Article 26 and has to be declared invalid.

51. Section 16 provides that when the office of the Administrator is temporarily vacant it shall be competent for the Government, notwithstanding the provisions of Sections 14 and 15, to appoint an officer of the Government not below the rank of Deputy Collector or Deputy Commissioner appointed under the Madras Hindu Religious and Charitable Endowments Act to be in additional charge of the office of the Administrator, provided that the period of such additional charge shall not exceed one month. By reason of the non obstante clause contained in this Section which excludes the applicability of even the qualification mentioned in Section 14 that the person to be appointed as Administrator of the Devaswom should profess the Hindu religion, it is rendered possible for the Government to place a non-Hindu officer in additional charge of the office of the Administrator temporarily for a period not exceeding one month. When we look into the provisions of Section 17 wherein the powers and duties of the Administrator are enumerated it will be seen that he is the chief executive officer of the Devaswom who is charged *inter alia* with the duties to arrange for the proper performance of the rites and ceremonies in the Temple, to provide facilities for the proper performance of the worship by the worshippers, to ensure the safe custody of all funds and properties including jewellery and to arrange for the proper collection of offerings made in the Temple. His functions cannot be said to be merely secular in as much as he is to arrange for the performance of the rites and ceremonies in the Temple in accordance with the custom and usage obtaining in the Temple as per the directions of the Committee. We feel no doubt that Section 16 in so far as it empowers the Government to appoint a non-Hindu to be in additional charge of the functions of the Administrator of the Temple constitutes a clear violation of the rights of the denomination under Articles 25 and 26 (a) and 26 (b) of the Constitution.

52. Sections 17 to 19 are relevant only to show that even though a Committee is constituted under Section 3 in whom the administration and control of the Devaswom is purported to be vested, it is really the Administrator appointed and controlled by the Government who wields and exercises all the powers of administration. Sub-section (2) of Section 17 says that notwithstanding the provisions of Section 3 (1) vesting the administration and management of the Devaswom in the Committee the Administrator shall be responsible for the custody of all records and properties of the Devaswom. By sub-section (4) he is vested with the power to grant licences in respect of Temple lands and leases of Temple buildings for periods not exceeding one year and to call for and accept tenders for works or supplies the value whereof does not exceed five thousand rupees. He is also empowered to order for any emergency repairs the cost of which does not exceed five thousand rupees. Further Section 18 states that the Administrator may in cases of emergency direct the execution of any work or the doing of any act which is not provided for in the budget and the immediate execution or the doing of which is in his opinion necessary for the preservation of the properties or safety of worshippers or for the due performance of the rites and ceremonies in the Temple irrespective of the amount of cost that such work may involve. The only duty that is cast on the Administrator is to make a report to the

Committee about the action so taken by him with the reasons therefor. We have already referred to the fact that under the rules promulgated by the Government the Committee is not vested with any effective control over the Administrator and he is virtually to function only under the control of the Government. The conferment of "extraordinary powers" on the Administrator under Section 18 without making him fully answerable to the Committee constitutes, in our opinion, an infringement of the right of the denomination to manage and administer the institution and its properties under Article 26 Clauses (b) and (d).

53. No objection can be taken to the provisions of Section 19 in so far as they provide for the preparation of the establishment schedule by the Administrator and its submission to the Committee and later to the Commissioner for the latter's approval. But, sub section (6) of that Section which states that the creation of any new appointment carrying a salary of not less than Rs. 200/- per mensem shall be subject to the previous sanction of the Government suffers from the infirmity already referred to by us, namely, the direct involvement of the Government in the routine administration of a religious institution which is inconsistent with the secular character of the State.

54. Very strong objection was taken by the petitioner to the provisions of Section 20 which deal with subject of appointment of officers and employees of the Temple. Sub-section (1) of the Section lays down that appointments of all officers and employees of the Temple are to be made by a Board consisting of (a) the Commissioner, Hindu Religious and Charitable Endowments Department (b) the Administrator (c) an officer professing the Hindu religion authorised in that behalf by the District Collector and (d) two persons elected by the Managing Committee from among its members. Sub-section (2) provides that in exercising the power of appointment conferred by sub-section (1) the Board shall follow such procedure as may be prescribed by the Government. It will be seen that the constitution of the Board is such that three out of its five members are full-time officers of the State Government and the remaining two members are to be elected by the Managing Committee. When under the scheme of the Act the administration, control and management of the Devaswom is to vest in the Managing Committee constituted under Section 3 which, we may assume for the purpose of this discussion, is intended to function as a representative of the denomination, it passes one's comprehension as to why the power to appoint the officers and employees of the Temple which is basically an essential component of the right of administration and management of the Temple should be taken out of the hands of the Managing Committee and vested in a totally distinct and independent body, namely, the Board over whose functioning the Managing Committee has absolutely no control. In this connection it was rightly stressed by the petitioner that the employees of the Temple referred to in Section 20 will include also the Melsanthi (the Head Priest) and his assistants who are in charge of the performance of the daily rituals and ceremonies inside the sanctum sanctorum. The choice of the Melsanthi and other employees who are to be in charge of the performance of the rituals and ceremonies will necessarily have to be made on the basis of considerations having an intimate bearing on the religious practice, usage and tradition obtaining in respect of the Temple. Hence there is force in the contention of the petitioner that it will be highly detrimental to the interests of the institution and the denomination to which it belongs to entrust the power of appointment of such employees in the Temple to the Board comprised mainly of officers of the secular Government. Further, the right to make appointments of the officers and employees of the Temple being an important ingredient of the right of administration and management, it should vest in the body which represents the denomination and not in any other agency. The

Board constituted under Section 20 cannot by any stretch of imagination be regarded as a representative of the denomination. In fact, even according to the respondents, it is only the Managing Committee constituted under Section 3 which is to be regarded as the representative of the denomination. In so far as Section 20 confers the power of appointment of officers and employees of the Temple not on the Managing Committee but on a separate and independent body, namely, the Board, it must be held that the Section is violative of Article 26 (a), (b) and (d) of the Constitution.

55. While dealing with this subject of control and involvement by Government we may also refer to the provisions of Section 21 which provides that the budget is to be prepared annually for the Devaswom by the Administrator and after its approval by the Committee it is to be submitted to the Government and it is to become operative only on its being sanctioned by the Government. Power is given to the Government to modify any part of the budget so as to satisfy itself that adequate provision has been made for the maintenance of the prescribed working balance and for meeting the liabilities of the Devaswom. It is further provided by Section 22 that if, in the course of any year, the Committee considers it necessary to modify the figures shown in the budget with regard to its receipts or expenditure a supplementary budget should be submitted by it to the Government through the Commissioner. To crown everything there is a revisional power conferred on the Government under Section 25 in the widest possible terms. Under that Section the Government is empowered to call for and examine the records of the Administrator or the Committee or the Commissioner to satisfy themselves as to the regularity, correctness, legality or propriety of any decision taken or order passed by those authorities and to pass such orders as the Government considers fit in supersession of the action taken by the Administrator or the Committee etc. In short, the scheme of the Act as emerging from a combined reading of its provisions is as follows : - Though the administration, control and management of the Devaswom is purported to be vested in the Committee constituted under Section 3 that Committee is to consist overwhelmingly of members nominated by the Government who are to hold office at the arbitrary pleasure of the Government with a Damocleus sword of threat or removal or supersession constantly hanging above their heads. The real powers of administration including even the right to be in custody of all records and properties of the Devaswom are vested in an Administrator who is to be a Government officer of the rank of a Deputy Collector or Deputy Commissioner (Hindu Religious and Charitable Endowments). The power of appointment of the Administrator is vested in the Government as also the power to take disciplinary action against him. Though he is to function as the Secretary of the Committee the Committee is left without any effective control over his work or conduct and the Administrator is really answerable only to the Government. Even the power to appoint the other officers and servants of the Devaswom is not given to the Committee but is conferred on a separate body, namely, the Board appointed by the Government under Section 20. The power to sanction alienations of moveable or immovable properties of the Devaswom is vested in the Government. If the Committee is to lend money to any person or to borrow money on behalf of the Devaswom and it should obtain previous sanction of the Government. The Committee is only to submit to the Government a report on the Administration of the affairs of the Devaswom (Section 13). The annual budget is to be submitted to the Government and it becomes operative only when sanctioned by the Government, power being reserved with the Government to make modifications to the budget proposals. Section 24 (3) (e) to which we shall be presently referring, empowers the Government to authorise the execution of any work or undertaking for the purpose of the Devaswom by expending the temple funds and clause (f) thereof confers a further power

on the Government to sanction the diversion of Temple funds for any of the purposes enumerated therein, some of which are totally unconnected with the Temple and its affairs. Any action or decision taken or order passed by the Administrator or the Committee irrespective of whether it relates to the performance and conduct of the rites and ceremonies inside the Temple or the management of the properties, is liable to be scrutinized and revised by the Government in the exercise of the power conferred by Section 25, thereby making it possible for the Government to interfere even with the day-to-day administration of the Temple in relation to both its religious as well as secular matters. The orders passed by the Government are expressly declared by Section 29 to be immune from challenge before any court of law, thereby leaving the denomination completely powerless to question before any forum the action taken by the Government. The resultant position is that even though the Act has by Section 3 provided for the constitution of a Managing Committee it is the executive Government that is vested under the Act with the effective control and superintendence of even the day-to-day administration of all the religious and temporal affairs of the Temple. As already indicated by us, such active involvement by Government in the administration of a religious institution is not consistent with the secular character of the State. The State can undoubtedly make laws to regulate the administration of the trust properties and other secular activities connected with a religious institution. Such laws may provide necessary safeguards to ensure that the properties are administered by the denomination in accordance with the law; but the actual administration must be left to the denomination itself and cannot be taken over by the State either directly or even indirectly. In so far as the aforementioned provisions of the Act virtually vest the administration and control over the institution and its funds in the State Government we must hold that these provisions offend the religious freedom guaranteed to the denominator under Article 26 (a), (b) and (d) of the Constitution.

56. Next we come to the attack levelled by the petitioner against Section 24 which states that there shall be constituted a fund called "Sree Guruvayoor Temple Fund" and that it should be vested in and administered by the Committee. Among other things that fund is to consist of the income derived from the movable and immovable properties of the Devaswom and all gifts or contributions made by the worshipping public other than the contributions collected by the Renovation Executive Committee referred to in Section 32. Both under the law relating to Hindu religious trusts and also under the custom, usage and tradition governing the institution, the properties of the Guruvayoor Temple and the income derived therefrom are vested in the Deity. The effect of the impugned Section is to divest the idol or Deity of its proprietary right over the income and to transfer it to the Committee constituted under Section 3. Under the guise of providing for better administration of the trust it is not permissible for the legislature to divest the Deity of its proprietary interest in the trust properties and transfer it to another body. The movable properties of the Temple include also the jewels used for adorning the Deity as well as the vessels and other paraphernalia that are intimately connected with the performance of the religious rites in the Temple. The transference of the proprietorship over the movable and immovable properties from the Deity to the Committee constitutes a serious interference with the religious practice of the denomination and also with its right to manage its own affairs in matter of religion and to administer its property in accordance with law. We have no hesitation to strike down subsection (1) of Section 24 which purports to vest the Guruvayoor Devaswom Fund in the Committee as unconstitutional and void.

57. Strong objection was taken by the petitioner to the provisions of clause (f) of sub-section (3)

of the Section (Section 24) which states that the Committee may with the previous sanction of the Government utilize the Devaswom Fund for any of the following purposes :-

- "(i) for the establishment and maintenance of, or the making of any grant by contribution to, any poor home or other similar institution;
- (ii) for the establishment and maintenance of any educational institution or the maintenance of any educational institution owned or managed by the Devaswom or in which the Devaswom has interest;
- (iii) for the making of any contribution to any religious institution; and
- (iv) for the making of any contribution to any fund instituted by the Government for the amelioration of the poor or for National Defense."

There is force in the objection raised by the petitioner that the Section empowers the Committee to make such diversion of Devaswom funds even without the pre-requisite condition that a diversion is to be effected only in the event of there being a surplus left after meeting all the purposes of the trust.

58. The next ground of objection raised by the petitioner is even more formidable and it is that none of the purposes mentioned in clauses (i) to (iv) can be said to be connected with the Devaswom or related to the purposes for which the trust was founded. In *Ratilal Panachand Gandhi v. State of Bombay*<sup>8</sup> the validity of Sections 55 and 56 of the Bombay Public Trusts Act, 1950 (29 of 1950) which *inter alia* empowered the Charity Commissioner and the court to divert the trust funds for purposes which the Charity Commissioner or the court considers expedient or proper came up for consideration before the Supreme Court. Dealing with the said question their Lordships observed in paragraph 19 at page 394:

"The provisions of sections 55 and 56, however, have extended the doctrine much beyond its recognized limits and have further introduced certain principles which run counter to well-established rules of law regarding the administration of charitable trusts. When the particular purpose for which a charitable trust is created fails or by reason of certain circumstances the trust cannot be carried into effect either in whole or in part, or where there is a surplus left after exhausting the purposes specified by the settlor, the court would not, when there is a general charitable intention expressed by the settlor, allow the trust to fail but would execute it 'cy pres', that is to say, in some way as nearly as possible to that which the author of the trust intended. In such cases, it cannot be disputed that the court can frame a scheme and give suitable directions regarding the objects upon which the trust money can be spent.

It is well established, however, that where the donors' intention can be given effect to, the court has no authority to sanction any deviation from the intentions expressed by the settlor on the grounds of expediency and the court cannot exercise the power of applying the trust property or its income to other purposes simply because it considers them to be more expedient or more beneficial than what the settlor had directed. - Vide Halsbury, 2nd

Edn. Vol. IV, p. 228. But this is exactly what has been done by the provision of Section 55 (c) read with Section 56 of the Act. These provisions allow a diversion of property belonging to a public trust or the income thereof to objects other than those intended by the donors if the Charity Commissioner is of opinion, and the court confirms its opinion and decides, that carrying out wholly or partially the original intentions of the author of the trust or the object for which the trust was created is not wholly or partially expedient, practicable, desirable or necessary; and that the property or income of the public trust or any portion thereof should be applied to any other charitable or religious object.

<sup>8</sup> AIR 1954 SC 388

Whether a provision like this is reasonable or not is not pertinent to our enquiry and we may assume that the legislature, which is competent to legislate on the subject of charitable and religious trust, is at liberty to make any provision which may not be in consonance with the existing law; but the question before us is, whether such provision invades any fundamental right guaranteed by our Constitution, and we have no hesitation in holding that it does so in the case of religious trusts. A religious sect or denomination has the undoubted right guaranteed by the Constitution to manage its own affairs in matter of religion and this includes the right to spend the trust property or its income for the religious purpose and objects indicated by the founder of the trust or established by usage obtaining in a particular institution. To divert the trust property or funds for purposes which the Charity Commissioner or the court considers expedient or proper, although the original objects of the founder can still be carried out is to our minds an unwarrantable encroachment on the freedom of religious institutions in regard to the management of their religious affairs. It is perfectly true, as has been stated by the learned counsel for the appellants, that it is an established maxim of the Jain religion that 'Devadravya' or religious property cannot be diverted to purposes other than those which are considered sacred in the Jain scriptures.

But apart from the tenets of the Jain religion, we consider it to be a violation of the freedom of religion and of the right which a religious denomination has under our Constitution to manage its own affairs in matters of religion, to allow any secular authority to divert the trust money for purposes other than those for which the trust was created. The State can step in only when the trust fails or is incapable of being carried out either in whole or in part. We hold, therefore, that Clause (3) of Section 55, which contains the offending provision and the corresponding provision relating to the powers of the court occurring in the latter part of Section 56 (1), must be held to be void."

To the same effect are the following observations of Rajagopala Ayyangar, J. in *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*<sup>9</sup>, at page 873:-

"Article 26 confers on every religious denomination two rights which are relevant in the present context, by clause (b) - 'to manage its own affairs in matters of religion' - and by the last clause - clause (d) - 'to administer such property' which the denomination owns or has acquired (vide clause (c)) 'in accordance with law'. In considering the scope of Article

26 one has to bear in mind two basic postulates; First that a religious denomination is possessed of property which is dedicated for definite uses and which under Article 26 (d) the religious denomination has the right to administer. From this it would follow that subject to any law grounded on public order, morality or health the limitations with which Article 26 opens, the denomination has a right to have the property used for the purposes for which it was dedicated. So far as the present case is concerned, the management of the property and the right and the duty to ensure the proper application of that property is admittedly vested in the Dai as the religious head of the denomination. Article 26 (d) speaks of the administration of the property being in accordance with law and the

<sup>9</sup> AIR 1962 SC 853

learned Attorney-General suggested that a valid law could be enacted which would permit the diversion of those funds to purposes which the legislature in its wisdom thought it fit to appropriate. I feel wholly unable to accept this argument."

In the light of the aforesaid pronouncements it has to be held that the provision contained in Section 24 (3) (f) empowering a secular authority, namely, the State Government to sanction the diversion of Devaswom funds for purposes unconnected with the Devaswom and its affairs is unconstitutional and void.

59. The next Section to be noticed is Section 29 which bars suits, prosecution or other legal proceedings against the Government, the Commissioner, the Committee or any members thereof or the Administrator in respect of anything which is in good faith done or intended to be done under the Act or the Rules made thereunder. In as much as the remedy under Section 92 of the Civil Procedure Code is made unavailable to the members of the denomination by reason of Section 5 (3) (e) of the Madras Hindu Religious and Charitable Endowments Act the applicability of which to the Guruvayoor Devaswom is kept in force by Section 35 of the Act, the effect of this Section (Section 29) is to completely deprive the denomination of any right to approach the civil court for questioning the acts of the Administrator the Committee or the Government and for safeguarding the interests of the Temple against mismanagement. In fact this provision drives the last nail on the coffin so far as the denomination is concerned and it imposes a total restraint on the denomination from discharging its legitimate role in protecting the interests of the religious institution in respect of the maintenance and administration of which it has a guaranteed fundamental right. We do not find it possible to uphold the constitutional validity of Section 29 in the setting in which the said Section occurs in this Act.

60. Lastly, we come to Section 32 which provides for the constitution of the Renovation Executive Committee. The said committee is to consist of such number of members not exceeding thirty as may be appointed by the Government and the Minister of the State of Kerala in charge of Devaswom is to be the President of the committee. The Government is empowered to nominate one of the members of the committee to be its Vice-President and Working Chairman. The Section does not prescribe any qualifications as such for membership of the committee. But sub-section (1F) enumerates certain disqualifications for membership, namely, (a) not professing the Hindu religion (b) being engaged in any subsisting contract with the Devaswom of the committee or (c) being subject to any of the disqualifications mentioned in clauses (a) to (c) of Section 5 (3) to which reference has already been made. The members of the

committee are to hold office for a period of three years. As in the case of the members of the Managing Committee, the Government is empowered to remove from office any member of the Renovation Executive Committee for the reason *inter alia* that his presence in the committee is, in the opinion of the Government, prejudicial to the interests of the Devaswom or detrimental to the object for which the Committee is constituted. This Committee is to exercise such powers and discharge such functions in connection with the renovation and improvement of the Temple as may be specified by the Government. The Committee is empowered to receive contributions from the public for the specific purpose of renovation and improvement of the Temple. All such contributions are to go into a fund called the "Sree Guruvayoor Renovation Fund" and it is to be administered by the Renovation Executive Committee subject to such directions as the Government may from time to time issue. The fund is to be utilised for the renovation and improvement of the Temple and for incidental purposes including the maintenance of necessary establishments and any unspent amount of the fund is to be transferred to the Temple Fund. It is to be noted that the Renovation Executive Committee is a body wholly independent of the Managing Committee constituted under Section 3 and it is not in any manner answerable or accountable to the Managing Committee. The responsibility to carry out necessary works of renovation and improvement of the Temple is essentially an integral part of the function of administration and management of the Temple. Under Section 3 the administration and management of the Temple is statutorily vested in the Guruvayoor Devaswom Managing Committee on the assumption that it is a body representative of the denomination. It is difficult to see how it is legally permissible to divest that body of the important function of deciding what works of renovation and improvement have to be carried out in the Temple and getting the same executed. To invest that function in an independent Committee and to empower that Committee to collect contributions from the public in the name of the Temple and to expend those amounts in the guise of administering a special fund is certainly highly objectionable. All amounts contributed by the devotees and the general public for the purpose of renovation and improvement of the Temple automatically become part of the trust fund belonging to the Devaswom and it is only the body legally charged with the duty of administering the trust that can deal with the said funds. To permit any other agency which can in no way be regarded as the duly constituted representative of the denomination, to collect funds in the name of the Devaswom and to administer such fund in accordance with such direction as may be issued by the secular Government is totally opposed to all fundamental principles of law governing the administration of religious trusts. We have no hesitation to hold that, Section 32 interferes with the freedom of the denomination to practice its religion and to maintain the religious institution and administer its properties in accordance with law and is hence violative of Articles 25 and 26 (a), (b) and (d) of the Constitution. For the reasons already indicated by us it is also not permissible for the Government to involve itself directly in the matter of renovation and reconstruction of a religious institution like the Temple by providing that a Minister of the State Government shall be the President of the Renovation Executive Committee. This is another defect fatal to the validity of the Section.

61. What remains is only to consider the contentions urged by the petitioner based on Article 14 of the Constitution. Firstly, it was argued that in singling out the Guruvayoor Devaswom for special treatment without including in the scope of the Act many other important temples in respect of which also there is need for ensuring proper administration, there has been an arbitrary discrimination resulting in violation of Article 14. We see no merit in this contention. The Sree Krishna Temple at Guruvayoor is unique in many respects. If the legislature considered that there

was necessity to make special provisions for ensuring the proper administration of this Temple which attracts lakhs of devotees from all parts of the country it was perfectly open for it to enact a special legislation for regulating the administration of the affairs of this institution alone. The uniqueness of the institution affords sufficient basis and justification for a classification. Article 14 cannot therefore be said to be violated merely on account of the fact that the legislation is in respect of the Guruvayoor Devaswom alone. It was however further contended by the petitioner that even if there is justification for a classification of the Temple for purposes of enacting a special legislation for regulating its administration, the provisions of the impugned Act are such that their underlying purpose has no reasonable nexus with the basis of the classification. Elaborate arguments were addressed before us with respect to the different provisions of the Act which have the effect of completely depriving the denomination of its rights in relation to the administration of the Temple and its properties, of vesting in the Managing Committee 'the Temple Fund' which really forms the property of the Deity and of authorising the Managing Committee, with the sanction of the Government, to divert the temple funds for secular purposes unconnected with the Temple even in the absence of any surplus etc., the contention being that there is no national nexus whatever between the ground of classification referral to above and the purpose underlying these impugned provisions. We feel that there is *prima facie* force in this ground of attack raised by the petitioner based on Article 14 of the Constitution. But, since the arguments urged in support of this contention substantially overlap those which have been already considered by us in detail while dealing with the challenge raised by the petitioner against the same provisions of the Act on the ground of violation of Articles 25 and 26 of the Constitution, and especially in view of the conclusion recorded by us that these provisions are liable to be struck down as violative of Articles 25 and 26, we do not think it necessary to pronounce upon the merits of this plea based on Article 14 of the Constitution.

62. To sum up, we hold that for the reasons mentioned in the foregoing paragraphs Sections 3, 4, 11, 12, 14 to 18, sub section (6) of Section 19, Section 20, Section 21, Section 24 (1), (2) and clause (f) of Sub-section (3), Section 29 and Section 32 are unconstitutional and void. Since the operative provisions of the Act are mainly contained in the aforementioned provisions which we have held to be invalid and since it is not possible to effectuate the object, purpose and scheme of the Act with the aid of the remaining provisions alone the result is that the entire statute is rendered ineffective and void.

63. In the light of our conclusion that Section 24 (3) (f) is invalid and unconstitutional it must automatically follow that the impugned resolution Ext. P-1 passed by the Managing Committee is illegal and void. Ext. P-1 will therefore stand quashed.

64. Before parting with the case we wish to place on record our grateful appreciation of the very valuable assistance that we have derived from the exhaustive and learned arguments advanced before us by the counsel appearing on both sides.

65. The original petition is allowed to the extent indicated above. We direct the parties to bear their respective costs. A carbon copy of this judgment will be furnished to the learned Additional Advocate-General free of charge forthwith. Like copies will be furnished to the other counsel appearing in the case on payment of the requisite charges.

**Viswanatha Iyer, J.**

66. I am a party to the decision in *Kunhettan Thampuran v. State of Kerala*<sup>9</sup>, In that case though many sections of the Guruvayoor Devaswom Act, 1971 were challenged, it was expressly made clear by the counsel appearing for the petitioners that the attack is confined to Clauses (a), (b) and (g) of Section 10 and clause (b) of Section 27 (2) of the Act and in the first paragraph of the judgment pronounced by Raghavan, C. J. (for himself and on my behalf) this fact is specifically referred to. In the light of that submission limiting the attack to certain Sections only, the validity of the other provisions of the Act were not considered in that case. Gopalan Nambiyar, J. (as he then was) agreed with that judgment. In the present petition which is being considered by a larger Bench the entire Act 6 of 1971 as amended by the Guruvayoor Devaswom (Amendment) Act 28 of 1972 is challenged and a fuller and detailed examination of the provisions of the Act as amended shows that the administration of the Guruvayoor Devaswom and properties is completely taken out of the Hindu denomination and hence the Act violates Article 26 of the Constitution. I agree with the leading judgment delivered by V. Balakrishna Eradi, J.

ORDER OF FULL BENCH

67. Since it will not be in the public interest to create a hiatus in the matter of the administration of the Devaswom even for any short period, we consider it appropriate in the interests of justice to direct that the operation of this judgment will stand stayed for a period of two weeks from today in order to allow reasonable time to the State to take such steps as it may deem fit in the light of this pronouncement by this Court.

Order accordingly.

<sup>9</sup>(1973) Ker LT 106 (FB)