

IN THE COURT OF THE MUNSIFF, KANJIRAPPALLY.
Present : Smt. Smitha Susan Mathew, Munsiff

Tuesday 21st day of January 2025
1st day of Magha 1946

I.A 1/2022 in O.S 348/2022

Petitioner/ Plaintiff:-

- 1) The Travancore Devaswom Board, represented by its Secretary, Nanthancode, Kawadiar Post, Thiruvananthapuram, Pin 695003.

- 2) Assistant Devaswom Commissioner, The Travancore Devaswom Board, Mundakayam, Mundakayam Village, Kanjirappally Taluk.

By Adv. Aji R. Nair.

Counter Petitioner / Defendant:-

Mundaakayam Grama Panchayath,
represented by Secretary, Mundakayam P.O.,
Mundakayam Kara, Mundakaym Village,
Kanjirappally Taluk, Kottayam District.

By Adv. Muhammed Haris K.S.

This petition having been finally heard on 21.01.2025 and the court on the same day passed the following:-

ORDER

This is an application at the instance of the Plaintiffs, filed under Order XXXIX Rule 1 of the Code of Civil Procedure.

2. The petition averments in brief, are as follows:- The suit is for permanent prohibitory injunction. The 1st petitioner -The Travancore Devaswom Board is a statutory body incorporated under the Travancore Cochin Hindu Religious Institutions Act, 1959. The 2nd petitioner is its Assistant Commissioner of Mundakkayam Group of 1st Petitioner-Board. Shri Parthasarathy temple at Mundakkayam also known as Paschimaghatom Devaswom is included in schedule I as an incorporated Devaswom. At present it is one of the Devaswoms under the administration of Mundakkayam group. As per the Settlement Register an extent of 62 Acres 31 cent purayidom in Old Survey No.225/1 as Pandaravaka Pattom settled to Sarkar "Sree Pandarakariyam Cheivarkal" as Pattadar with Pattadar No.655. Therefore the Devaswom has the "Jenmon Right" over the property. Re-survey has been finalized in Mundakayam Village and the temple is located in Block No.5 Re-Survey No.447/4 of (old Survey No.225/1). The temple property is recorded in Thandaper No.297. As per BTR it is recorded as 1.05.60 Hector (2.61 Acres). The Devaswom Land Register shows that the temple possessed an area of 11.76 Acres of land in old Survey No.225/1 re-survey No. 447 and 448 in block 5.

3. Respondent is a local self-government, which is duly represented by its secretary. In the year 2014 the respondent tried to trespass upon the property having an extent of 10 cents comprised in resurvey No. 448 block No.5 of Mundakkayam village and to reduce the property in to their possession. A prohibitory order issued by the Special Tahazildar, land conservancy office, Thiruvananthapuram compelled the respondent to withdraw itself from the illegal attempt made by them. Subsequently up to 2022, the respondent Panchayath did not attempt to take the possession of the property. This part of Devaswom property is scheduled in the Plaint as plaint scheduled property. In the month of January, 2022, the defendant using its workers unloaded construction materials in the Plaint Schedule property and made hasty preparations to erect a four-storied building. Hence the suit was filed along with this application to restrain them from carrying out any construction activities in the Plaint Schedule Property.

4. The respondents entered appearance and filed objection and the contentions in brief, is as follows:- The plaint schedule property is not identifiable and lying without boundaries. So much so, an injunction relief cannot be granted. Respondent's property is lying in Re-survey Nos.448/9, 448/10, 448/11 in Block No.5 of Munadakkayam Village. They purchased the property in the year 1972. Since then, they had made considerable improvements in the property including shopping complex, bus stand, police station, veterinary hospital etc.. Moreover, the said property is in continuous possession of the respondent for more than 51 years. The defendants had started construction of a shopping complex building in

the property 3 years ago. Now the structure of the building is complete and construction of 4th floor is going on. The constructions are being carried out expending huge public money. If the construction activities are stalled, they will be put to irreparable injury and hardship. Petitioner had not raised any objection during the initial period of construction. As per the basic tax register and possession certificate, the property is in Defendant's name. Plaintiff's attempt is to grab the property. The petition is filed with ulterior motives and liable to be dismissed.

5. Heard learned counsel appearing on both sides.

6. The following points arise for determination;-

- 1) Is the petitioner entitled for an order of temporary prohibitory injunction as prayed for?
- 2) Reliefs and costs.

7. From the side of the petitioner, Exts.A1 to A5 were marked. From the side of respondents, Exts.B1 to B3 were marked. Exts. C1 & C1(a) were also marked for the purpose of this petition.

8. Point No. 1:- The first petitioner is the Travancore Devaswom Board and second petitioner is the Assistant Commissioner of Mundakkayam group of the first petitioner Board, who represents the first petitioner. Sree Parthasarathy Temple at Mundakkayam is included in the schedule I and at present it is one of the Devaswom under the administration of Mundakkayam group of the first plaintiff board headed

by the second plaintiff. As per the settlement register an extent of 62.31 acres in old survey No.225/1 is settled to Sarkar, "Sri. Pandarakarya Cheivarkal" as Pattadhar with Patta No.655. Therefore the Devaswom has the Janmam right over the property. As per resurvey number this property is comprised in 447/4, block No.5 of Mundakkayam Village having Thandaper No.297. As per BTR, the area is 2.61 acres. The Devaswom land register shows that the Temple possessed an area of 11.76 acres in the resurvey Nos. 447 and 448 in block No.5. Plaintiffs produced a copy of settlement register to show that they are in possession of 62.31 ares of land in old survey No.225/1. They also produced copy of Devaswom land register to show that they are possessing 11.76 ares of land in old survey No.225/1. These documents are marked as Ext.A1 and A2 respectively for reference.

9. Petitioner alleges that the defendant, a local self government body attempted to trespass on 10 cents of property comprised in resurvey No.448, block No.5 of Mundakkayam Gramapanchayath in 2014. A prohibitory order issued by the special Tahasildar land conservancy office, Thiruvananthapuram compelled the defendant to withdraw from the property. The defendant/ respondent had not made any interference till 2022. Recently, the defendant started to download certain building materials in the plaint schedule property. Immediately, the petitioner issued a notice to the Panchayath against the construction. The copies of the notice were issued to all revenue authorities of Mundakkayam and the District Collector, Kottayam. The copy of the notice issued to the Panchayath Secretary, Mundakkayam Grama Panchayath on 19.11.2022

is marked as Ext.A3 for reference. The receipt of the notice issued by the Grama Panchayath produced is marked as Ext.A4.

10. The petitioner produced Ext.A5, a copy of the order of the Special Tahasildar, Thiruvithamcore Devaswom board dated 08.10.2014 in A2/222/2009. This order would show that the 11.76 acres of land comprised in resurvey No.447 and 448 of block No.5 of Mundakkayam Village (old survey No.225/1) is found to be the property of Thiruvithamcore Devaswom Board in a survey conducted based on the revenue records and Devaswom land register. It is also stated therein that the Hon'ble High Court in DBA 48/2002 dated 25.06.2002 observed that the above referred to 11.76 acres of property belongs to the Devaswom Board. Hence, the Special Tahasildar prohibited construction of buildings or making new improvements and creating new documents with respect to the above referred to property having an extent of 11.76 acres and another 2 cents of property which was transferred as per a document No.665/1/2014 of SRO, Koovappally until further orders.

11. Respondent/ defendant contends that the property comprised in resurvey Nos. 448/9, 448/10, 448/11 belong to it as per Ext. B1 sale deed No 1982/1972 and different types of improvements are being done by the Panchayath for a long period. According to defendant, the properties of plaintiffs and defendant are well demarcated. The objection shows that though the construction work was started 3 years ago, nobody objected it. They produced Ext. B2, a letter from the village officer to the secretary, Gramapanchayath, which shows that the properties comprised in resurvey Nos. 448/9, 448/10 and 448/11 are in possession of the

Panchayath and Ext B3, a possession certificate showing that the Panchayath is in possession of properties having resurvey Nos. 448/10 and 448/11. Ext. B4 is a resurvey sketch showing the subdivisions of Field No. 448. It is true that Plaintiff had not specified the subdivisions. But they claim 11.76 acres of property in resurvey No. 447 and 448. Out of this, encroachment is alleged in the 2 cents of property. Ext.A5 would show that copy of the order is communicated to the defendant herein also. This supports the claim of the petitioner that there was a dispute regarding the properties in the possession and title of the properties between the Devaswom Board and the Panchayth. From the documents available before the court, it can be seen that to locate the 2 cents of property comprised in resurvey No. 448, survey measurements based on revenue records are necessary. Till then the property in question to be preserved. Defendants contend that if the construction works is obstructed it would cause great loss to the Panchayath. If the construction is being continued and finally it would be proved that the building is in the property of plaintiff, this would be a waste of public money. The Devaswom board and the Panchayath are functioning with entirely different interests. Devaswom board manages the functioning of temples and religious institutions. The properties under its control are primarily intended for religious and cultural purposes. The properties coming under the Panchayath are used for public infrastructure, development, welfare purposes etc. The purpose of use of properties will be different in accordance with the functioning of both parties. The expenditure incurred by the Panchayath using public money for construction of the work may

not be beneficial for the Devaswom Board, if the dispute is found in favour of the plaintiff. Hence the Panchayath cannot be permitted to continue with the work already started. As the identification of properties are highly necessary, both parties shall take urgent steps to survey the properties claimed to be in their possession and title and locate the plaint schedule property. Till then to preserve the property, the court is of the view that an order of status quo as noted by the commissioner would be just and proper. Hence the parties are liable to keep status quo with respect to the properties as noted by the commissioner in the sketch and Mahzer filed in IA 02/2022 in this case.

In the result, the IA is disposed of directing both parties to keep status quo with respect to plaint schedule property, as noted by the commissioner in IA 02/2022.

Dictated to the Confidential Assistant, typed by her corrected by me and pronounced in open court on this the 21st day of January, 2025.

Sd/-

SMITHA SUSAN MATHEW
MUNSIFF

APPENDIX :-

Exhibits Marked for the petitioner:-

A1	Nil	Settlement Register
A2	Nil	Devaswom Board Register.
A3	19.11.2022	Copy of notice issued to Mundakayam Grama Panchayath Secretary.
A4	19.11.2022	Acknowledgment Receipt.

A5 08.10.2014 Copy of the Order of the Special Tahsildar,
Thiruvithamcore, Devaswom Board.

Exhibits Marked for the Counter Petitioner:-

B1 01.07.1972 Certified copy of Sale Deed No. 1982/1972
of Kanjirappally SRO.

B2 03.01.2023 Letter from the Village Officer Mundakayam
to the Secretary, Mundakayam Grama
Panchayath.

B3 19.12.2019 Possession Certificate No. 2154/2019 of
Village Officer Mundakayam.

Third Party Exhibits:- Nil

Court Exhibits:-

C1 09.01.2023 Mahazar prepared by Commissioner
Advocate Anooja R.

C1(a) 09.01.2023 Sketch prepared by Commissioner
Advocate Anooja R.

Witness Examined for the petitioner:- Nil

Witness Examined for the Counter petitioner:- Nil

Id/-
MUNSIFF

//True copy //

Typed By : Sheeba C.N.

Compd. By : Jisamol S.R.

MUNSIFF