

# VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 31<sup>ST</sup> DAY OF MAY 2023 / 10TH JYAISHTA, 1945

W.P.(C) NO. 19921 OF 2021

PETITIONERS:

- 1 COCHIN DEVASWOM BOARD,  
REPRESENTED BY ITS SECRETARY IN CHARGE, COCHIN  
DEVASWOM BOARD OFFICE, ROUND NORTH, THRISSUR-  
680001.
- 2 THE ASSISTANT COMMISSIONER,  
THRIPUNITHURA GROUP, COCHIN DEVASWOM BOARD,  
OFFICE OF THE DEVASWOM ASSISTANT COMMISSIONER,  
THRIPUNITHURA, ERNAKULAM DISTRICT.
- 3 THE DEVASWOM OFFICER,  
VYTTILA DEVASWOM, OFFICE OF THE DEVASWOM  
OFFICER, VYTTILA, ERNAKULAM DISTRICT.  
  
BY ADV K.P.SUDHEER, STANDING COUNSEL FOR CDB

RESPONDENTS:

- 1 THE DISTRICT POLICE CHIEF,  
ERNAKULAM, KOCHI-682011.
- 2 THE CIRCLE INSPECTOR OF POLICE,  
JANAMAITHRY POLICE STATION, PALARIVATTOM,  
ERNAKULAM DISTRICT-682025.
- 3 HAROON,  
THATTAMPARAMBU, TEMPLE ROAD, THAMMANAM P.O.,  
ERNAKULAM DISTRICT, KOCHI-682032.

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- 4# SATHYAN,  
THATTAMPARAMBU, THAMMANAM P.O., ERNKAULAM  
DISTRICT, KOCHI-682032.
- 5 SAJI,  
KUYILATH HOUSE, THAMMANAM P.O., ERNKAULAM  
DISTRICT, KOCHI-682032.
- 6## UNNIKRISHNAN,  
CHENDATH HOUSE, THAMMANAM P.O., ERNKAULAM  
DISTRICT, KOCHI-682032.
- 7### MAHESH,  
SREEHARI, THAMMANAM P.O., ERNKAULAM DISTRICT,  
KOCHI-682032.
- 8 RAJAN,  
THOPPU PARAMBU, THAMMANAM P.O., ERNKAULAM  
DISTRICT, KOCHI-682032.
- 9 DILEEP,  
PROPRIETOR, S.N. TRAVELS, THAMMANAM P.O.,  
ERNKAULAM DISTRICT, KOCHI-682032.
- 10\* CORPORATION OF KOCHI,  
REPRESENTED BY ITS SECRETARY, CORPORATION  
OFFICE, PARK AVENUE ROAD, MARINE DRIVE, KOCHI-  
682011.
- 11\* KERALA WATER AUTHORITY,  
REPRESENTED BY ITS MANAGING DIRECTOR, JALA  
BHAVAN, VELLAYAMBALAM, THIRUVANANTHAPURAM-  
695033.
- 12\* ASSISTANT EXECUTIVE ENGINEER,  
KERALA WATER AUTHORITY, ABM TOWER 38/72 B1  
GANDHINAGAR ROAD, OPPOSITE INDIRA GANDHI  
HOSPITAL, NEAR RAJEEV GANDHI STADIUM,  
KADAVANTHARA, KOCHI - 682020.

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- 13\*\* KERALA STATE ELECTRICITY BOARD LIMITED,  
REPRESENTED BY ITS CHAIRMAN AND MANAGING  
DIRECTOR, VYDYUTHI BHAVANAM, PATTOM,  
THIRUVANANTHAPURAM-695004.
- 14\*\* ASSISTANT EXECUTIVE ENGINEER,  
KSEB SECTION OFFICE, X879+2F3, VYTTILA, KOCHI-  
682019.
- 15\*\*\* THE REVENUE DIVISIONAL OFFICER  
REVENUE DIVISIONAL OFFICE, FORT KOCHI,  
ERNAKULAM DISTRICT, PIN- 682001.
- 16\*\*\*\* NARAYANAN EMBRANDIRI  
AGED 57 YEARS  
S/O KRISHNAN EMBRAMTHIRI, MADAMANA HOUSE,  
KOOTHPADY TEMPLE ROAD, THAMMANAM, ERNAKULAM,  
PIN: 682 032.
- 17\*\*\*\* SABU KARACKAL JOSEPH  
AGED 52 YEARS  
S/O. JOSEPH, KARACKAL HOUSE, KOOTHPADY TEMPLE  
ROAD, THAMMANAM, ERNAKULAM, PIN: 682 032.
- 18\*\*\*\* HASSAINAR  
AGED 46 YEARS, S/O. A.P.ALI, AKKARAPARAMBU  
HOUSE, KOOTHPADY TEMPLE ROAD, THAMMANAM,  
ERNAKULAM, PIN: 682 032.
- 19\*\*\*\* RIYAS.K.H.  
AGED 46 YEARS, S/O. K.A.HAMSA, KITHAKKERY  
HOUSE, KOOTHPADY TEMPLE ROAD, THAMMANAM,  
ERNAKULAM, PIN: 682 032.
- 20\*\*\*\* MOHAN.K.  
AGED 38 YEARS, S/O. KUNJIRAMAN, VINEETH BHAVAN,  
KOOTHPADY TEMPLE ROAD, THAMMANAM, ERNAKULAM,  
PIN: 682 032.

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- 21\*\*\*\* BETTIN.P.J.  
AGED 46 YEARS, S/O. P.C.JOSEPH, PALLATH HOUSE,  
KOOTHAPADY TEMPLE ROAD, THAMMANAM, ERNAKULAM,  
PIN: 682 032.
- 22\*\*\*\* VINAYAN.K.D.  
AGED 60 YEARS, S/O. K.K.DIVAKARAN, KULANGARA  
PARAMBU, KOOTHAPADY TEMPLE ROAD, THAMMANAM,  
ERNAKULAM, PIN: 682 032.
- 23\*\*\*\* RENJITH.P.K.  
AGED 62 YEARS, S/O. K.K.KELU, KOTTAMPARAMBIL  
HOUSE, KOOTHAPADY TEMPLE ROAD, THAMMANAM,  
ERNAKULAM, PIN: 682 032.
- 24\*\*\*\* ANWAR  
AGED 42 YEARS, S/O. P.M.PAREETH KUNJU,  
POOVATHUM VEETIL, KOOTHAPADY TEMPLE ROAD,  
THAMMANAM, ERNAKULAM, PIN: 682 032.
- 25\*\*\*\* AJMAL  
AGED 42 YEARS, S/O.P.M.PAREEKUTTY, PADINJARE  
VEEDU, KOOTHAPADY TEMPLE ROAD, THAMMANAM,  
ERNAKULAM, PIN: 682 032.
- 26\*\*\*\* U.V.PREETHIMON  
AGED 51 YEARS, S/O. VISWANATHAN O.K.,  
UZHINJELIYIL HOUSE, KOOTHAPADY TEMPLE ROAD,  
THAMMANAM, ERNAKULAM, PIN: 682 032.
- 27\*\*\*\* FELIX GANDHI JAYANTHI ROAD RESIDENCE  
ASSOCIATION, REPRESENTED BY ITS SECRETARY KALAM  
SULAIMAN, AGED 47, S/O.K.B.SULAIMAN, DARBATH,  
KOOTHAPADY TEMPLE ROAD, THAMMANAM, ERNAKULAM,  
PIN: 682 032.
- 28\*\*\*\* KUTHAPPADY RESIDENCE WELFARE ASSOCIATION (KRWA)  
REPRESENTED BY SECRETARY, K.A.RIYAS, AGED 41,  
S/O. K.K.ABU, KODATHUMURY HOUSE, KOOTHAPADY  
TEMPLE ROAD, THAMMANAM, ERNAKULAM, PIN: 682 032.

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29\*\*\*\* KUTHAPPADY RESIDENCE WELFARE ASSOCIATION (KRWA)  
REPRESENTED BY ANWAR BASHA, AGED 60, S/O.  
ISMAIL RAWTHAR, KAKKADU HOUSE, KOOTHAPADY  
TEMPLE ROAD, THAMMANAM, ERNAKULAM, PIN: 682  
032.

#R4 IS DELETED FROM PARTY ARRAY AS PER ORDER  
DATED 18.02.2022 IN I.A.2/2022 IN WPC  
19921/2021.

##R6 IS DELETED FROM PARTY ARRAY AS PER ORDER  
DATED 06.10.2021 IN I.A.01/2021 IN  
WPC19921/2021.

###R7 DELETED FROM PARTY ARRAY AS PER ORDER  
DATED 26-07-2022 IN IA 7/2022 IN WP(C)  
19921/2021.

\*ADDITIONAL R10, R11 AND R12 IMPEADED AS PER  
ORDER DATED 18.02.2022 IN I.A.1/2022 IN WPC  
19921/2021.

\*\*ADDL. R13 AND R14 ARE IMPEADED AS PER ORDER  
DATED 04.03.2022 I N IA.3/2022 IN WP(C)  
19921/2021.

\*\*\*ADDL. R15 AS PER ORDER DATED 21.06.2022 IN  
I.A.4/22 IN WPC 19921/2022.

\*\*\*\*ADDITIONAL R16 TO R29 IMPEADED AS PER  
ORDER DATED 10.08.2022 IN I.A.8/2022 IN WPC  
19921/2021.

BY ADVS.

R1, R2 & R15 BY SRI.S.RAJ MOHAN, SR.GP

R3, R5, R8 & R9 BY SRI.K.R.VINOD

R3, R5, R8 & R9 BY SMT.M.S.LETHA

R10 BY SMT.RAJITHA V.P.-STANDING COUNSEL

R11 & R12 BY SHRI.P.BENJAMIN PAUL,SC,KERALA  
WATER AUTHORITY

W.P.(C) Nos. 19921 & 26610 of 2021

R11 & R12 BY GEORGIE JOHNY

R13 & R14 BY R.HARISHANKAR

R16 TO R29 BY N.SATHEESH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR FINAL HEARING ON 17.03.2023, ALONG WITH WP(C).26610/2021, THE COURT ON 31.05.2023 DELIVERED THE FOLLOWING:

W.P.(C) Nos. 19921 & 26610 of 2021

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 31<sup>ST</sup> DAY OF MAY 2023 / 10TH JYAISHTA, 1945

WP(C) NO. 26610 OF 2021

PETITIONERS:

- 1      RATHEESH K.V  
         AGED 37 YEARS  
         S/O.VENUGOPALAN K., HARISREE, KALAVATH HOUSE,  
         42/1135, KUTHAPPADY, THAMMANAM, ERNAKULAM 682  
         032, \*[PRESIDENT STHANIYA SAMITI, HINDU AIKYA  
         VEDI.]
- 2      RANJITH M.V.  
         S/O.K.N. VENUGOPAL, MANGALATH HOUSE, LPS ROAD,  
         PALARIVATTOM P.O., ERNAKULAM 682 025
- 3      RAJEEV R.  
         S/O.R.RAMACHANDRAN NAIR, RAGHI NIVAS, MAJOOR  
         ROAD, VYTTILA P.O., COCHIN 682 019  
  
         \*DELETED THE WORDS OCCURRING AFTER THE ADDRESS  
         OF THE 1ST PETITIONER IN THE WP(C) AS PER ORDER  
         DATED 29.11.2021 IN I.A 2/2021 IN WP(C)  
         26610/2021  
  
         BY ADVS.  
         S.PRASANTH  
         K.ARJUN VENUGOPAL

W.P.(C) Nos. 19921 & 26610 of 2021

RESPONDENTS :

- 1 COCHIN DEVASWOM BOARD  
REP.BY ITS SECRETARY IN CHARGE, COCHIN DEVASWOM  
BOARD OFFICE, ROUND NORTH, THRISSUR - 680 001.
- 2 THE ASSISTANT COMMISSIONER  
THRIPUNITHURA GROUP, COCHIN DEWASWOM BOARD,  
OFFICE OF THE DEVASWOM ASSISTANT COMMISSIONER,  
THRIPUNITHURA, ERNAKULAM - 682 031.
- 3 THE DEVASWOM OFFICER  
VYTILLA DEVASWOM, OFFICE OF THE DEVASWOM  
OFFICER, VYTILLA, ERNAKULAM - 682 019.
- 4 STATE OF KERALA  
REP.BY THE PRINCIPAL SECRETARY, REVENUE  
(DEVASWOM), ROOM NO.394, 1ST FLOOR, MAIN BLOCK,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM -  
695 001.
- 5\*\* SPECIAL TAHASILDAR(LC)  
COCHIN DEVASWOM BOARD OFFICE OF COCHIN DEVASWOM  
BOARD, THRISSUR - PIN 680 001.
- 6\*\* ANWAR P . P  
S/O PAREEKUNJU, POOVATHUMVEETTIL, KUTHAPADY,  
THAMMANAM P.O , KOCHI - 682 032.
- 7\*\* HAROON  
BAGHAVATIPARAMABU, KUTHAPADY, THAMMANAM P.O,  
KOCHI 682 032.
- 8\*\* SHILEEJA  
KUYLATH HOUSE, KUTHAPADY, THAMMANAM P.O, KOCHI  
682 032.
- 9\*\* ABDUL KHADER  
SACHIPARAMBIL VEEDU, KUTHAPADY, THAMMANAM P.O,  
KOCHI 682 032.



W.P.(C) Nos. 19921 & 26610 of 2021

- 10\*\* BETTY  
MALIEKKAL HOUSE, KUTHAPADY, THAMMANAM P.O,  
KOCHI 682 032.
- 11\*\* JOSEPH  
MALIEKKAL HOUSE, KUTHAPADY, THAMMANAM P.O,  
KOCHI 682 032.
- 12\*\* VASUDEVAN  
[VINEETH HOUSE, KUTHAPADY, THAMMANAM P.O, KOCHI  
682 032]\*\*

\*\*ADDL. R5 TO R 12 IMPEADED IN THE WP(C) AS  
PER ORDER DATED 29-11-2021 IN IA 1/2021 IN  
WP(C) 26610 /2021.

\*\*\*ADDRESS OF R12 IS CORRECTED AS 'VALSALYAM',  
MATHUKKOTHU, KAPPAD ROAD, POST VARAM, KANNUR,  
PIN-670594, AS PER ORDER DATED 08-04-2022 IN IA  
1/2022 IN WP(C) 26610/2021.

BY ADVS.

R1 TO R3 BY K.P.SUDHEER, SC FOR COCHIN DEVASWOM  
BOARD

R4 & R5 BY SRI.S.RAJMOHAN, SR.GOVERNMENT  
PLEADER

R6 TO R11 BY K.R.VINOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR FINAL  
HEARING ON 17.03.2023, ALONG WITH WP(C).19921/2021, THE  
COURT ON 31.05.2023 DELIVERED THE FOLLOWING:

**JUDGMENT**

P.G. Ajithkumar, J.

W.P.(C) No.19921 of 2021:- Kuthapady Sastha Temple (hereinafter referred to as the Temple) is administered and managed by the 1<sup>st</sup> petitioner, Cochin Devaswom Board. The Temple has 3.87 acres of land comprised in Survey Nos.265 and 404 of Poonithura Village in Kanayannur Taluk. The petitioners alleging that the local residents pose resistance when the petitioners attempted to put up fence around the said property and despite request the 2<sup>nd</sup> respondent did not render adequate assistance and police protection, filed this Writ Petition seeking the following reliefs:

- “(i) issue a writ of mandamus or any other appropriate writ, order or direction commanding respondents 1 and 2 to afford adequate and effective police protection to the petitioners and the workers employed by them for carrying out the fencing of the property belonged to the first petitioner and covered by Exts.P1 and P3;
- (ii) direct the 2<sup>nd</sup> respondent to initiate appropriate action against respondents 3 to 9 and their henchmen from causing obstructions to the petitioners and the workers for effecting the fencing of the property of “Kuthapady Sastha Temple.”

1.1. The petitioners would contend that Ext.P1 Thanathu Register evidences the Temple's title to and possession of aforementioned 3.87 acres of land and Ext.P3, survey sketch issued by the Village Officer, Poonithura proves the petitioners' possession and occupation of the said property. They allege that a road along the northern and western extremity of the said property was attempted to be laid on the initiative of the Corporation of Cochin and therefore the 1st petitioner filed O.S.No.833 of 1992 before the Munsiff's Court, Ernakulam. That suit was decreed and the Corporation was prohibited from trespassing upon or establishing any road along the property of the Temple. However, the local inhabitants with the help of politicians and others have been trying to establish a road and use it for which they have no right. In such circumstances, the 1st petitioner decided to put up a fence around the Temple property. The local inhabitants, particularly the party respondents braved to repeat such attempts. The 2<sup>nd</sup> petitioner submitted Ext.P4 request to the 2<sup>nd</sup> respondent

W.P.(C) Nos. 19921 & 26610 of 2021

seeking protection and assistance for putting up the fence. But the 2<sup>nd</sup> respondent refused to render necessary assistance and hence the Writ Petition was filed.

1.2. This Writ Petition was initially considered by a learned Single Judge of this Court. On 24.09.2021, this court passed an interim order directing the 2<sup>nd</sup> respondent to maintain law and order in the area where the temple is situated and to ensure that there was no breach of peace. The said order was extended from time to time. Later the writ petition was listed before us.

1.3. On 08.04.2022, this Court on finding from the submissions made by the learned Standing Counsel for the Cochin Devaswom Board and also the learned counsel for the petitioners in the connected writ petition No. 26610 of 2021 that vehicles were being parked indiscriminately in the disputed pathway/road, and also the temple compound, this Court directed the Station House Officer of Janamaithri police station, Palarivattom to ensure that no vehicles are parked inside the temple compound, other than those of the devotees

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coming for worship in the temple. It was directed to continue the order dated 24.09.2021 to be in force.

1.4. Respondent Nos.3, 5, 8 and 9 filed a counter affidavit through the 3<sup>rd</sup> respondent. They would contend that those respondents and other residents in the locality have been using for their ingress to and egress from their respective properties including for vehicular traffic a portion of the temple property as a public pathway for several decades. The Corporation of Kochi named it "Kuthapady Temple road". Even from the survey sketch produced by the petitioners, existence of such a public road is evident. Its dimensions as to the width and length are mentioned in it. From the title deeds of local residents, it can be seen that the said public pathway existed for decades together. Despite all, the petitioners illegally attempted to close down the said public pathway/road and therefore the local residents filed a petition under Section 133 of the Code of Criminal Procedure, 1973 before the Sub Divisional Magistrate. A copy of which is Ext.R3(b), and the said petition is pending consideration. In

W.P.(C) Nos. 19921 & 26610 of 2021

O.S.No.833 of 1992, neither these respondents nor other residents of the locality were parties. That suit was filed not on any representative capacity also. So, the decree in the said suit does not bind these respondents. Erection and existence of electric and telephone posts in the road stand testimony to its existence for decades together. Based on those facts and circumstances, these respondents seek to dismiss the Writ Petition.

1.5. Reply affidavit was filed by the petitioners in answer to the counter affidavit filed by respondents No.3, 5, 8 and 9. Apart from refuting the contentions in the counter affidavit, the petitioners averred that an extent of 0.00.60 hectares of temple property was trespassed upon and reduced into their possession by some of the local residents. The petitioners further would contend that on their application, the Special Tahsildar initiated proceedings under the provisions of the Kerala Land Conservancy Act to reclaim the portions of the temple property encroached upon. The petitioners produced the judgment in O.S.No.833 of 1992, Ext.P6 and

also a copy of the plaint in that suit, Ext.P7 in order to fortify their contention that the road is of recent origin.

1.6. On the application of the petitioners, additional respondents 10 to 15 were impleaded. Additional respondents 15 to 29 were impleaded on their application.

1.7 Respondent No.10, Corporation of Kochi filed a counter affidavit admitting that in O.S.No.833 of 1992, a decree restraining the Corporation of Kochi from making any incursions into the temple property was passed on 16.07.1997. This respondent further contended that the Corporation did not carry out any construction on the disputed public road/pathway or any encroachment into the temple property, after the said decree.

1.8 Additional respondents 11 and 12, Kerala Water Authority filed an affidavit wherein they contended that 17 cents of land comprised in Survey No.404/1 of Poonithura Village has been in occupation of the Kerala Water Authority, and as per the available records, the said property was transferred to the Kerala Water Authority by virtue of

W.P.(C) Nos. 19921 & 26610 of 2021

Government Order No.1250/77/RD dated 26.09.1977. These respondents produced therewith Ext.R11(a) which is a communication issued by the Village Officer, Poonithura concerning the said fact.

1.9. Respondent Nos.16 to 29 filed a counter affidavit through respondent No.16. These respondents raised contentions similar to those raised by respondent Nos.3, 5, 8 and 9. They further would contend that the road in question was in existence even prior to filing of O.S.No.833 of 1992 and that fact is evident from the title documents of persons owning the properties abutting the said public road. They produced Exts.R16 (a) to R16(g) in order to substantiate that fact. They accordingly would contend without being apprised of those facts, O.S.No.833 of 1992 was decreed. These respondents accordingly seek to dismiss the Writ Petition.

2. W.P.(C) No.26610 of 2021:- The petitioners claiming to be devotees of Kuthapady Sree Dharma Sastha Narasimha Murthi filed this Writ Petition seeking the following reliefs:



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- “i) Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction commanding respondent Nos.1 to 3 to forthwith initiate action to remove encroachments from the land of the Kuthapady Sree Dharma Shastha Narasimha Murthi Temple at Kuthapady, Thammanam and reclaim the encroached land by initiating action under the Kerala Land Conservancy Act, 1957 and protect its borders by fencing or building a boundary wall;
- ii) Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction commanding respondent Nos.1 to 3 to build barricades or take such other steps necessary to ensure that vehicles are not driven over or parked on land of the Kuthapady Sree Dharma Sastha Narasimha Murthi Temple at Kuthapady, Thammanam.”

2.1 The petitioners' contention is that out of a total of 4.82 acres of land owned by the Temple, 3.87 acres of land comprised in Survey Nos.265 and 404 of Poonithura Village is the Temple premises. They would allege that a public road was illegally constructed along the Temple compound in the year 1992 and a portion of the Temple compound was

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trespassed upon by neighbouring land owners. People illegally have been plying vehicles along the said road and parking vehicles inside the Temple compound. More or less, contentions similar to those raised by the petitioners in W.P. (C) No.19921 of 2021 are reiterated by the petitioners herein also. They further would contend that as early as in 1992, the District Collector was approached by the 1<sup>st</sup> respondent for fixation of the boundary of the Temple compound, but no effective steps have so far been taken. Similarly, it is alleged that the 1<sup>st</sup> respondent, Cochin Devaswom Board did not take effective steps for protecting the temple property by putting up fence and to reclaim the property trespassed upon by the neighbouring land owners.

2.2 The 1<sup>st</sup> respondent is the 1<sup>st</sup> petitioner in W.P.(C) No.19921 of 2021. It has entered appearance through the learned Standing Counsel and filed a counter affidavit. The 1st respondent reiterated the contentions as it had raised in W.P.(C) No.19921 of 2021. The 1<sup>st</sup> respondent produced Exts.R1(a) to R1(i) along with the counter affidavit.

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3. Heard the learned Standing Counsel for the Cochin Devaswom Board for the petitioners in W.P.(C) No.19921 of 2021 and respondent Nos.1 to 3 in W.P.(C) No.26610 of 2021, the learned Senior Government Pleader, the learned Standing Counsel for the Kerala Water Authority, the Kerala State Electricity Board Ltd., Corporation of Kochi and the respective learned counsel appearing for the petitioners in W.P.(C) No.26610 of 2021 and the party respondents.

4. The claim of the Cochin Devaswom Board is that the land where Kuthapady Sastha Temple is situated has an area of 3.87 acres. It is comprised in survey Nos.265 and 404 of Poonithura Village in Kanayannur Taluk. Ext.P3 in W.P.(C) No.19921 of 2021 is a survey plan of the said property prepared by the Village Officer, Poonithura Village. Demarcation of the Temple compound and the disputed road in Ext.P3 is not disputed by any of the parties. Similarly, the extent of Temple property as demarcated in Ext. P3 is not in dispute.

5. The contention of the Cochin Devaswom Board is that the road delineated in Ext.P3 survey plan was illegally laid in 1992. By asserting that the Corporation of Kochi or any local inhabitant had no right in the said road/pathway, the Cochin Devaswom Board took steps to put up a fence around the Temple compound. That attempt was resisted by the local inhabitants, which was supported by local politicians. In such a scenario the Cochin Devaswom Board approached the 2<sup>nd</sup> respondent-Circle Inspector of Police, Palarivattom for protection and assistance to put up the fence. It is the specific contention of the Devaswom Board that in O.S.No.833 of 1992 a decree of permanent prohibitory injunction restraining the Corporation of Kochi from making any incursions or trespass upon the the Temple property of 3.87 acres, which was the plaint schedule property, was granted on 16.07.1997 and therefore the Board had every right to put up fence around the said property and exclude entry of others to the said property.

6. It has come out that respondent Nos.3, 5, 8 and 9 along with a few others filed a petition before the Sub Divisional Magistrate, Fort Kochi under Section 133 of the Code of Criminal Procedure with the allegation that obstructions were being caused in the public pathway, which is the road in dispute herein. On noticing that the said respondents along with a few others filed W.P.(C) No.26236 of 2021 for a direction to the Sub Divisional Magistrate for a speedy disposal of the aforesaid petition, where the Cochin Devaswom Board or its officials were not made parties, we had directed the said respondents to file individual affidavits explaining the facts and circumstances leading to filing of the said writ petition, that too without the Cochin Devaswom Board in the party array. They have accordingly filed affidavits.

7. That as it may, the irresistible inference from the rival claims and contentions is that the right respondent Nos.3, 5, 8 and 9 and also other party respondents put forward over the disputed road is as a public pathway only. In

other words, none of the party respondents has a claim that he or she has a personal right; namely, proprietary or easement right, over the disputed pathway. Therefore, the question involved in these Writ Petitions has to be approached on the premise that the whole claim upon the disputed road is as a public pathway.

8. Section 207(1) of the Kerala Municipality Act, 1994 reads as follows:

“(1) Notwithstanding anything contained in the Kerala Land Conservancy Act, 1957 (8 of 1958) or in any other law for the time being in force all public roads, streets, lanes and paths, the bridges, ditches, dykes and fences on or beside the same, and all adjacent land not being private property appertaining thereto in any municipal area other than National Highway or State Highway or major district road or roads classified by Government as such shall stand transferred to, and vest absolutely in the Municipality together with all pavements, stones and other materials and other things provided therein, all sewers, drains, drainage works, tunnels and culverts, whether made at the cost of the Municipal fund or otherwise in, alongside or under such roads and all works, materials and things appertaining thereto.”

9. It is the definite contention of the additional 10<sup>th</sup> respondent-Corporation of Kochi as well as the party respondents that the disputed road is vested in the Corporation. Admittedly, a Board depicting 'Kuthapady Temple Road' was erected by the Corporation of Kochi at its entrance from the eastern public road. As pointed out above, all along, the party respondents have been asserting that the said road has been maintained by the Corporation and is a public road. Another fact which is not in dispute is that the road in question is a part of the Temple property.

10. The additional 10<sup>th</sup> respondent-Corporation of Kochi, in the wake of Ext.P6 judgement in O.S.No. 833 of 1992, does not now claim that it has right over that road and right to maintain it. Of course, the party respondents would claim that such a public pathway has been in existence for decades together. In that regard, respondent Nos.16 to 29 place reliance on Exts.R16(a) to R16(g) which are title deeds of some of the said respondents. In the scheduled descriptions in the said documents mention about existence of

a pathway/road which they claim is the road in question.

11. Ext.P6 judgment was rendered by the I Additional Munsiff, Ernakulam holding that the road formed along the Temple property was not proved to be a public road and it is vested with the Corporation of Kochi, the defendant in that suit. Accordingly, a decree was passed restraining the Corporation of Kochi from making any incursions into the plaintiff scheduled property or trespassing upon that property for construction of any road. The essential dispute in that suit was with respect to the existence or not of the road/pathway. Material evidence considered in that suit, O.S.No.833 of 1992, was the report of the Commissioner and the plan appended thereto, which were marked as Exts.C1 and C1(a) in that suit. Ext.P5 is a copy of the said report and the plan. Query No.5 posed to the Commissioner was to ascertain old-age of the road in question. The Commissioner visited the property on 08.04.1997. It was reported in Ext.P5 that the road in existence was not more than 5 years old. That suit was filed in 1992. Accepting the said finding of the Commissioner the



learned Munsiff held that the road in question was formed immediately prior to or after filing of the suit. After considering Ext.P5 and also other evidence and circumstances, the Munsiff's Court came to the conclusion that the said road was laid recently and for that purpose, a gate on the northern end of the eastern compound wall of the Temple property was demolished.

12. The aforesaid findings are with respect to existence or not of a public pathway. Section 42 of the Indian Evidence Act, 1872 says that the judgments, orders or decrees which relate to matters of a public nature relevant to the enquiry are relevant in a subsequent proceedings. It is true that none of the respondents other than the Corporation of Kochi was a party to O.S.No.833 of 1992. But when a Munsiff's Court rendered the judgment with respect to existence or not of a public road/pathway, Ext.P6 becomes relevant and liable to be considered here since the dispute herein is also regarding the same road/pathway.

13. The learned counsel appearing for the party respondents would submit that existence of such a public road being evident from Exts.R16(a) to (g) documents, the the said judgment and the decree or even Ext.P1 produced by the petitioners in W.P.(C) No.19921 of 2021 to claim that the road was illegally laid along the Temple property would not defeat the right of the party respondents. Of course, in those documents, the southern boundary of some of the properties is shown as either pathway or road. Except two, all those documents came into being after 1992. The description regarding existence of a pathway in those documents however is not sufficient to hold that such a public road has been in existence for decades together. As pointed out above, a competent civil court held in Ext.P6 that such a public road was recently created and the additional 10<sup>th</sup> respondent, Corporation of Kochi, the authority in which all the public roads and streets are vested in view of the provisions of Section 207(1) of the Kerala Municipality Act, is restrained from trespassing upon the said road.

14. The additional 16<sup>th</sup> respondent produced Ext.R16(i), which is an extract of asset register maintained by Kochi Corporation along with I.A.No.9 of 2022. Kuthapady Temple Road is entered in the said register as is evident from Ext.R16(i). On a perusal of that document and hearing submissions at the Bar, we directed the additional 10<sup>th</sup> respondent to produce the original Asset Register from which Ext.R16(i) was extracted. The original register was accordingly produced. In it such a road has been entered as one having one km length and 5 meters width. Since it was not clear from the said register as to when such an entry was made in the register, the 10<sup>th</sup> respondent was directed to file an affidavit explaining that fact. In the affidavit dated 24.01.2023, the Secretary of the 10<sup>th</sup> respondent averred that the register has been maintaining since 2012. It is further averred that no document indicating maintenance of such a register prior to the one produced before the court was found. Thus it is seen that Ext.R16(i) does not show that such a road came into existence before filing of O.S.No.833 of 1992.

15. From the facts and circumstances mentioned above, it is quite evident that the claim by all concerned is that the disputed road is a public way. None of the party respondents claims any personal or private right upon the said pathway. From Ext.R3(b), which is the copy of the petition filed by respondents Nos.3,5, 8 and 9 and a few others before the Sub Divisional Magistrate, Kochi also it is evident that the claim raised by them as well as local residents is that it is a public way. As pointed out above, a public pathway is statutorily vested in the Corporation. Claim of the party respondents is also not different. As per Ext.P6 decree the additional 10<sup>th</sup> respondent is prohibited from entering into the property, to which the road in question forms a part. In the light of the said facts and circumstances, the claim of the party respondents on the premises that the road in question is a public pathway/road cannot be countenanced. In that view of the matter, the petitioners have every right to avoid use of the disputed road/pathway as in the nature of a public road.

16. In **A.A. Gopalakrishnan v. Cochin Devaswom Board [(2007) 7 SCC 482]** a Three-Judge Bench of the Apex Court held that the properties of deities, temples and Devaswom Boards are required to be protected and safeguarded by their trustees/archakas/shebaites/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of 'fences eating the crops' should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

17. In **Travancore Devaswom Board v. Mohanan Nair [2013 (3) KLT 132]** a Division Bench of this Court

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noticed that in **A.A. Gopalakrishnan [(2007) 7 SCC 482]** the Apex Court emphasised that it is the duty of the courts to protect and safeguard the interest and properties of the religious and charitable institutions. The relevant principles under the Hindu law will show that the Deity is always treated similar to that of a minor and there are some points of similarity between a minor and a Hindu idol. The High Court therefore is the guardian of the Deity and apart from the jurisdiction under Section 103 of the Land Reforms Act, 1957 viz. the powers of revision, the High Court is having inherent jurisdiction and the doctrine of parents patriae will also apply in exercising the jurisdiction. Therefore, when there is a complaint about the loss of properties of the Temple, the truth of the same can be gone into by the High Court in appropriate proceedings.

18. In **Nandakumar v. District Collector and others [2018 (2) KHC 58]** a Division Bench of this Court noticed that the legal position has been made clear by the Apex Court as to the role to be played by the High Court in exercising the

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'parens patriae' jurisdiction in **Gopalakrishnan v. Cochin Devaswom Board [(2007) 7 SCC 482]**. The said decision was referred to and relied on by a Division Bench of this Court in **Travancore Devaswom Board v. Mohanan Nair [2013 (3) KLT 132]**. In the said circumstances, the properties of the Devaswom, if encroached upon by anybody and if any assignment/conveyance has been effected without involvement of the Devaswom, securing 'pattayam' or such other deeds, the same cannot confer any right upon the parties concerned, unless the title so derived is clear in all respects. There cannot be any dispute that the remedy to retrieve such property belonging to the Devaswom is by resorting to the course stipulated in the Kerala Land Conservancy Act, 1957.

19. The petitioners seek a writ of mandamus commanding respondents 1 and 2 to afford adequate and effective police protection while putting up fence around the Temple property, which is 3.87 acres of land comprised in Sy.Nos.265 and 404 of Poonithura Village. Admittedly, the

road in dispute had access to other public roads on the eastern and western side. From Ext.P5 commission report, it has come out that a pathway was in existence even prior to laying of the road in question and the entry to the said pathway was restricted by erecting two pillars. It is the specific observation of the Commissioner that there were sufficient indications regarding existence of a wicket gate allowing entry of people to use the walkway along the northern side of the Temple property. That may be the reason why in Exts.R16(a) to (g) documents boundary abutting the Temple property was described as a pathway. When the evidence is to that effect and prohibition in the decree against additional 10<sup>th</sup> respondent-Corporation of Kochi is not to trespass upon the Temple property and construct any road, no relief in favour of petitioners restraining use of such a walkable way on the northern or even eastern extremity of the Temple land can be granted.

20. Certainly, as held in the aforesaid decision, the Cochin Devaswom Board and its officials have every duty as



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well as right to protect the Temple property. That does not mean that any vested right that exists in favour of a third parties can be denied on the pretext of protecting the Temple property. In such circumstances, we are of the view that in W.P.(C) No.19921 of 2021, the petitioners are entitled to get a relief as claimed subject to the condition that a walkable way along the northern and eastern extremity of the Temple compound shall not be curtailed.

21. In W.P.(C) No.26610 of 2021 the petitioners seek two reliefs, namely, direction to the Cochin Devaswom Board and its officials to protect the Temple property and further to direct them to reclaim the Temple property trespassed upon by neighbouring land owners. In the light of the relief being granted in W.P.(C) No.19921 of 2021 the first relief requires no further consideration.

22. The Cochin Devaswom Board produced Exts.R1(e) to R1(i) in W.P.(C) No.26610 of 2021, which are notices issued by Tahsildar to the persons said to be in occupation of the temple property. Those are notices to surrender the property

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in unlawful occupation of the respective persons, issued under the provisions of the Kerala Land Conservancy Act, 1957. When those proceedings are pending, there is no reason to grant a writ of mandamus as claimed by the petitioners herein directing the Devaswom Board and its officials to take steps to reclaim the Temple property said to be trespassed upon.

23. Accordingly, respondent Nos.1 and 2 in W.P.(C) No.19921 of 2021 are directed to afford adequate and effective police protection to the petitioners for protecting the property of Kuthapady Sastha Temple, which has an extent of 3 acres and 87 cents comprised in Sy.Nos.265 and 404 of Poonithura Village in Kanayannur Taluk and covered by Ext. P1 in the manner prescribed hereinbefore.

W.P.(C) No.26610 of 2021 is closed in the light of the relief granted in the other Writ Petition.

**Sd/-**

**ANIL K. NARENDRAN, JUDGE**

**Sd/-**

**P.G. AJITHKUMAR, JUDGE**

APPENDIX OF WP(C) 19921/2021

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE RELEVANT PAGE OF THE THANATHU REGISTER MAINTAINED BY THE PETITIONERS IN RESPECT OF THE TEMPLE IN QUESTION REGISTER MAINTAINED BY THE PETITIONER.
- EXHIBIT P2 TRUE COPY OF THE PETITION DATED 16/05/1992 SUBMITTED BY THE THEN DEVASWOM COMMISSIONER TO THE DISTRICT COLLECTOR.
- EXHIBIT P3 TRUE COPY OF THE SURVEY PLAN ISSUED BY THE VILLAGE OFFICER, POONITHURA VILLAGE.
- EXHIBIT P4 TRUE COPY OF THE PETITION DATED 07/09/2021 SUBMITTED BY THE 2ND PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE REPORT AND ITS ENCLOSURES SUBMITTED BY THE ADVOCATE COMMISSIONER IN OS NO.833/1992 ON THE FILE OF THE MUNSIF'S COURT, ERNAKULAM.
- EXHIBIT P6 TRUE COPY OF THE JUDGMENT DATED 16/7/1997 IN OS NO.833/1992 ON THE FILE OF THE MUNSIF'S COURT, ERNAKULAM.
- EXHIBIT P7 TRUE COPY OF PLAINT IN OS NO.833/1992 FILED BY THE PETITIONER.
- EXHIBIT P8 TRUE COPY OF NOTICE ISSUED BY THE SPECIAL TAHSILDAR TO THE ENCROACHERS.

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EXHIBIT P9 TRUE COPY OF NOTICE DATED 14/6/2010  
ISSUED BY SPECIAL TAHSILDAR TO ONE  
B.M.HAROON.

EXHIBIT P9 A TRUE COPY OF NOTICE DATED 14/6/2010  
ISSUED BY SPECIAL TAHSILDAR TO ONE  
LEELA.

EXHIBIT P9 B TRUE COPY OF NOTICE DATED 14/6/2010  
ISSUED BY SPECIAL TAHSILDAR TO ONE  
P.K.VASUDEVAN.

EXHIBIT P C TRUE COPY OF NOTICE DATED 14/6/2010  
ISSUED BY SPECIAL TAHSILDAR TO ONE  
K.S.SREEKUMAR.

EXHIBIT P9D TRUE COPY OF NOTICE DATED 14/6/2010  
ISSUED BY SPECIAL TAHSILDAR TO ONE  
ABDUL KHADER.

EXHIBIT P9E TRUE COPY OF NOTICE DATED 14/6/2010  
ISSUED BY SPECIAL TAHSILDAR TO ONE  
BETTIN.

EXHIBIT P10 THE FIELD SURVEY PLAN IN RESPECT OF  
THE TEMPLE PROPERTY IN SURVEY NO.265  
OF POONITHURA VILLAGE.

EXHIBIT P11 TRUE COPY OF D-4688/2021 DATED  
14.03.2022 FROM THE REVENUE DIVISIONAL  
OFFICER, FORT KOCHI.

EXHIBIT P12 TRUE COPY OF JUDGMENT DATED 30.11.2021  
IN W.P.(C) NO.26236/2021 PASSED BY THE  
HIGH COURT.

RESPONDENT EXHIBITS

EXHIBIT R3(A) PHOTOGRAPH SHOWING THE NAME BOARD OF  
KOOTHPADI TEMPLE ROAD AT ITS  
ENTRANCE.

# VERDICTUM.IN

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- EXHIBIT R3 (B) THE COPY OF THE PETITION FILED BEFORE THE SUB DIVISIONAL MAGISTRATE, FORT KOCHI UNDER SECTION 133 OF THE CODE OF CRIMINAL PROCEDURE.
- EXHIBIT R3 (C) THE PHOTOGRAPH SHOWING THE LIE AND NATURE OF THE PATHWAY INCLUDING THE ELECTRIC POSTS SITUATED THEREIN.
- EXHIBIT R3 (D) THE COPY OF THE SALE DEED NO.2120/2005 OF SRO THRIPUNITHURA BELONGING TO ONE OF THE INHABITANTS IN THE SAID LOCALITY WHEREIN THE PATHWAY HAS BEEN SPECIFICALLY EARMARKED ON ITS EASTERN SIDE AS 'KOOTHPADI KSHETHRA ROAD'.
- EXHIBIT R11 (A) TRUE COPY OF THE COMMUNICATION DATED 27.08.2022 ISSUED BY THE VILLAGE OFFICER POONITHURA VILLAGE
- EXHIBIT R16 (A) A TRUE COPY OF THE SALE DATED NO.5924/2005 OF SRO, MARADU DATED 21-11-2005
- EXHIBIT R16 (B) A TRUE COPY OF THE SALE DEED NO.4150/2005 OF SRO, MARADU DATED 3-8-2005
- EXHIBIT R16 (C) A TRUE COPY OF THE SALE DEED NO.935/99 OF SRO, MARADU DATED 17-3-1999
- EXHIBIT R16 (D) A TRUE COPY OF THE SALE DEED NO.2226/1982 OF SRO, THRIPUNITHURA DATED 19.6.1982
- EXHIBIT R16 (E) A TRUE COPY OF THE SALE DEED NO.2795/1/08 OF SRO, MARADU DT.5-9-08
- EXHIBIT R16 (F) A TRUE COPY OF THE PARTITION DEED NO.585/1992 OF SRO, MARADU DATED 7-2-1992

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EXHIBIT R16(G)        A TRUE COPY OF THE SALE DEED  
NO.262/1986 OF SRO, MARADU DATED 21-1-  
1986

EXHIBIT R16(H)        A TRUE COPY OF THE CONSUMER CARD DATED  
20-12-1991 ISSUED BY KSEB

EXHIBIT R16(I)        TRUE COPY OF THE RELEVANT PAGE OF THE  
ASSET REGISTER OF THE 6TH RESPONDENT  
WITH COVERING LETTER DATED 11/10/2022

APPENDIX OF WP(C) 26610/2021

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE RELEVANT PAGE OF THE THANATHU REGISTER' OF THE KUTHAPADY, TEMPLE
- EXHIBIT P2 TRUE COPY OF THE PETITION DATED 16.5.1992 SUBMITTED BY THE COMMISSIONER OF THE 1ST RESPONDENT TO THE DISTRICT COLLECTOR, ERNAKULAM
- EXHIBIT P3 TRUE COPY OF THE LETTER DATED 7.9.2021 ADDRESSED BY THE 2ND RESPONDENT TO THE CIRCLE INSPECTOR OF POLICE, PALARIVATTOM POLICE STATION
- EXHIBIT P4 TRUE COPY OF A PHOTOGRAPH OF THE HOARDING PLACED BY A POLITICAL PARTY OBJECTING TO THE LEGAL ACTIONS OF THE 1ST RESPONDENT
- EXHIBIT P5 TRUE COPY OF WP(C) NO.19921 OF 2021, WITHOUT ITS EXHIBITS
- EXHIBIT P6 TRUE COPY OF THE INTERIM ORDER DATED 24.9.2021 PASSED IN WP(C) NO.19921 OF 2021
- EXHIBIT P7 TRUE COPIES OF THE PHOTOGRAPHS SHOWING THE BOARD ERECTED BY THE 1ST RESPONDENT AND VEHICLES PARKED NIL AROUND
- EXHIBIT P8 TRUE COPIES OF PHOTOGRAPHS SHOWING MARKINGS MADE BY THE 1ST RESPONDENT IN THE SURVEY CONDUCTED BY IT

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EXHIBIT P9 TRUE COPIES OF PHOTOGRAPHS SHOWING THE VEHICLE PARKED ON THE TEMPLE LAND AND THE BLOOD DRIPPING FROM IT.

EXHIBIT P10 TRUE COPY OF THE UNDATED REPRESENTATION SUBMITTED BEFORE THE DEVASWOM MINISTER BY HINDU AIKYA VEDI STHANEEYA SAMITI

RESPONDENT EXHIBITS

EXHIBIT R1 A TRUE COPY OF REPORT DATED 11.04.1997 AND ITS ENCLOSURES SUBMITTED BY THE ADVOCATE COMMISSIONER IN I.A.NO.3895/1995 IN OS.NO.833/1992 BEFORE THE MUNSIFF'S COURT, ERNAKULAM.

EXHIBIT R1 B TRUE COPY OF JUDGMENT DATED 16.7.1997 IN O.S. NO. 833/1992 PASSED BY 1ST ADDITIONAL MUNSIFF'S COURT, ERNAKULAM.

EXHIBIT R1 C TRUE COPY OF PLAINT DATED 18.5.1992 IN OS NO. 833/92 FILED BY THE PETITIONER.

EXHIBIT R1 D TRUE COPY OF COMMUNICATION DATED 12.12.2008 ISSUED FROM THE OFFICE OF THE LEARNED OMBUDSMAN FOR TRAVANCORE DEVASWOM BOARD AND COCHIN DEVASWOM BOARD TO THE SPECIAL TAHASILDAR, COCHIN DEVASWOM BOARD

EXHIBIT R1 E TRUE COPY OF NOTICE ISSUED BY THE SPECIAL TAHASILDAR TO THE ENCROACHERS.

EXHIBIT R1 F TRUE COPY OF NOTICE DATED 14.6.2010 ISSUED BY SPECIAL TAHSILDAR TO ADDL. 7TH RESPONDENT.

EXHIBIT R1 G TRUE COPY OF NOTICE DATED 14.6.2010 ISSUED BY SPECIAL TAHSILDAR TO ADDL. 9TH RESPONDENT.



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**EXHIBIT R1 H            TRUE COPY OF NOTICE DATED 14.6.2010  
ISSUED BY SPECIAL TAHSILDAR TO ADDL.  
10TH RESPONDENT**

**EXHIBIT R1 I            TRUE COPY OF NOTICE DATED 14.6.2010  
ISSUED BY SPECIAL TAHSILDAR TO ADDL.  
12TH RESPONDENT.**