



W.P.(MD)No.21518 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

W.P.(MD)No.21518 of 2019

A.Radhakrishnan

.. Petitioner

Versus

- 1.The Secretary to Government,
Tourism Culture & Endowments Department,
Secretariat, Chennai - 600 009.
- 2.The Secretary to Government,
Home Department,
Secretariat,
Chennai - 600 009.
- 3.The Commissioner,
Hindu Religious & Charitable Endowments Department,
119, Nungambakkam High Road,
Chennai - 600 034.
- 4.The Director General of Police,
Kamarajar Salai,
Chennai - 600 004.
- 5.The Inspector General of Police,
Central Zone,
Trichirapalli.
- 6.The District Collector,
Nagapattinam.
- 7.The District Collector,
Tanjore.



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8.The Deputy Superintendent of Police,
District Crime Branch,
Tanjore.

9.Sri-La-Sri Ambalavana Pandadra Sannithi,
Adheena Karthar,
Thiruvavaduthurai Adheenam,
Nagapattinam District.

10.The Superintendent-cum-General Manager,
Arulmigu Mahalinga Swamy Temple
Thiruvidadaimaruthur - 612 104
Tanjore District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 3 to 8 to take appropriate action on the report of 9th respondent dated 27.09.2019 by considering the petitioner's representation dated 04.10.2019 for the interest of 10th respondent temple.

For Petitioner : Mr.A.Radhakrishnan
(party in person)

For Respondents : Mr.P.Thilak Kumar
Government Pleader for R1, R2, R6 & R7

Mr.P.Subburaj
Special Government Pleader for R3

Mr.T.Senthil Kumar
Additional Public Prosecutor for R4, R5 & R8

Mr.B.Brijesh Kishore for R9 and R10

ORDER

R. MAHADEVAN, J.

Heard both sides and perused the materials placed before this court.



2. The prayer made in this writ petition styled as Public Interest Litigation, is to issue a writ of Mandamus, directing the respondent authorities to consider the petitioner's representation dated 04.10.2019 and take appropriate action based on the report dated 27.09.2019 submitted by the ninth respondent, in the interest of the tenth respondent temple.

3. The subject temple viz., Arulmigu Mahalinga Swamy Temple is a famous ancient temple located in the town of Thiruvudaimaruthur, Tanjore District and is dedicated to Lord Shiva. It is well known for the special ritual viz., 'Brahmahati Dosham Nivarthi Pooja', performed for the removal of evil forces and other spiritual ailments. The said pooja is believed to be extremely powerful, and the devotees from all over India, visit the temple for performing the same.

4. The petitioner as party-in-person alleges that the temple authorities are collecting Rs.550/- from each devotee for conducting the said Brahmahati Dosham Nivarthi Pooja and the tenth respondent who is in-charge of the collection of money, misappropriated the temple funds which are more than two crores of rupees. To substantiate the same, the petitioner drew the attention of this court to the report dated 27.09.2019 filed by the ninth respondent to the third respondent. It is also pointed out by the petitioner that the other temples under the control of the ninth respondent have also faced similar kind of loss at the hands of the persons, who



administer the respective temples. In this regard, a complaint was lodged to the Superintendent of Police, Tanjore and following the same, enquiry was conducted on 26.05.2019, however, no action was taken. Therefore, the petitioner made a representation dated 04.10.2019 to the Chief Minister's complaint Cell requesting to take appropriate action against the persons, who involve in such unauthorised collection of money and misappropriation of the temple funds. The said representation was forwarded to the fourth respondent police for taking immediate action. Thereafter, nothing moved, which compelled the petitioner to file this writ petition with the aforesaid prayer.

5. Upon notice, the respondents 9 and 10 filed a detailed counter affidavit, wherein, it is *inter alia* stated that in Thiruvidadaimarudhur Temple, auspicious rituals viz., Brahmahathi Dosham Nivarthi Pooja, Ambal Abisekham, Sami Abisekham and other homams, are followed from time immemorial and the devotees used to visit the temple and perform the rituals according to their belief. The counter affidavit further proceeds to state that some misappropriation was done in maintaining the accounts which was entrusted with the then Ulthurai Maniyam appointed by the ninth respondent and other subordinate officers, who accompanied him, and hence, a complaint was sent to the third respondent on 27.09.2019. Thereafter, the ninth respondent, Sri-La-Sri Adheena Karthar of Thiruvavaduthurai Adheenam removed the persons alleged to have committed the said act and appointed the 10th respondent as Superintendent of the subject temple.



6. The 10th respondent further stated in the counter affidavit that all the rituals are being conducted under the direct control of Sri-La-Sri Adheena Karthar. Originally, Rs.650/- was collected for performing Brahmahathi Dosham Nivarthi Pooja and with effect from 1.11.2022, the amount was enhanced to Rs.850/-, out of which, Rs.200/- is accounted for renovation of the temple work. Thus, according to him, the devotees are now permitted to perform poojas and other rituals in the subject temple without any hindrance and these respondents have taken effective steps to eradicate the misappropriation alleged to have been happened in all the temples under the control of the ninth respondent and that, there is no complaint whatsoever in this regard from the devotees.

7. That apart, it was stated in their counter affidavit filed by the respondents 9 and 10 that there are totally 28,504.33 acres of land under the control of the mutt and out of the same, 222.84 acres are under the encroachment of various persons. The counter affidavit further discloses that the properties belonging to Thiruvavaduthurai Adheenam are situated in S.Nos.148, 148/24, 149, 149/8, 150, 150/10, 150/13, 150/29, 151, 151/1, 151/13, 151/14, 153 to 159 and 180 of Kasidharmam Village; as per the settlement register, Thiruvavaduthurai Adheenam originally owns the total area of 699.27 acres, but only 688.65 acres stand in the name of the mutt and the balance area of land is in possession of some individuals. Though there was an order of this court dated 16.12.2021 in CRP(NDP)(MD)No.1697 of 2014 with respect to removal of encroachment in the lands belonging to the mutt,



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no effective steps have been taken to execute the said order. Therefore, the respondents 9 and 10 pray for appropriate direction to the respondent authorities for removal of encroachment in the lands belonging to the mutt.

8. From the aforesaid pleadings and submissions made by the parties, it is evident that the petitioner complained about the unauthorised collection of money for performing the rituals in the subject temple and misappropriation of temple funds; and that, such kind of misappropriation has also taken place in the other temples coming under the control of the ninth respondent Adheenam. On the other hand, while answering the query raised by the petitioner to the effect that as of now, there is no complaint with regard to unauthorised collection of money for performing the rituals in the subject temple, the respondents 9 and 10 made a request to issue direction to the respondent authorities for removal of encroachment in the lands belonging to the mutt. Thus, the two major issues that arise for consideration herein, are that (i)the persons connected with the temples have involved in the act of collection of money illegally for conducting poojas, rituals, etc. and misappropriated the temple funds; and (ii)the respondent authorities have not taken earnest steps to remove the encroachment in the lands belonging to the mutt.

9.1. As regards the first issue, it is to be noted that on earlier occasions, this court in similar circumstances, issued a series of directions in the orders passed in WA(MD)No.1468 of 2022 dated 02.12.2022 and in WP(MD)Nos.23410 and 23671 of



2022 dated 31.01.2023, by observing that *'temples are holy places of worship, visited by scores of devotees to attain peace and mental well-being. They show their devotion in a multitude of ways including donating food, money and performing various acts of service. Unfortunately, the temples' staff / servants misuse and mislead these devotees and turn the temples into a platform to generate profit. They must follow the rules and regulations laid down by temple administration and cannot be involved in the acts resulting in unlawful gain'*. It was further observed that *'every religious activities and functions within the precincts of the temple are based on the belief that the performance of the same, would bring in the blessings of the deity and therefore, the temples' staff / servants cannot utilise the same wrongly / illegally / unauthorisedly, to capitalize the faith of devotees by directing the income of the temple, nay, the rightful property of the deity itself, to their pockets'*. Pointing out the same, this court opined that such acts must be discouraged and the offenders of the same must be penalized for deceiving the devotees. After having observed so, this court issued the following directions at paragraph 15 of the judgment in WA(MD)No. 1468 of 2022:

"15. ... considering the nature of the issue involved herein, this court deems it appropriate to issue the following directions, for effective administration of the subject temple as well as other temples:

(i) The administration of temple(s) shall take all efforts to prevent the staff from providing any sort of service to the devotees and collecting monies / donations / contributions, in the name of the temple(s). If any complaint is received in this regard, action must be taken swiftly.

(ii) For all the services rendered in the temples across the State, such as poojas, marriage ceremonies, abhishegam, etc. amount, will have to be collected only by the administration of the temples and due receipt should be given to the devotees. In the absence of tickets/receipts issued by temple authorities, no one should be permitted to perform any religious activities in the temples. The amounts collected shall be properly



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accounted and audited by the authorities concerned. Necessary civil and criminal action must be initiated against all forthwith for any violation in this regard.

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(iii) A systematic, transparent and smooth functioning of the religious activities of the temples, have to be devised and that, the procedures preceding the religious ceremonies in all the temples across the State have to be streamlined. The Commissioner of HR & CE Department shall monitor the religious activities performed in the temples and take immediate action, if there is any illegality in the temple administration.

(iv) The temple administration shall ensure that all the receipts and expenditures of the said Temple is duly accounted for and that the services of the temple have to be offered only through an authorised website or in any other manner as may be prescribed by the Commissioner of HR & CE Department.

9.2. Similar directions were issued by this court in WP(MD)Nos.23410 and 23671 of 2022 in respect of the temple viz., Arulmighu Amirthakadeswarar Temple, Thirukadaiyur, Mayiladuthurai District. While so, it was reiterated that *"temples are places for worship visited by a host of citizens of varied cultures to get the eternal peace and harmony and it cannot be permitted to be turned as a platform for generating profit. The temples offer certain services to devotees for a nominal fee, which will be utilised for maintenance of the temples, including salary to the staff. Therefore, it is high time that the websites opened in the name of the temples by the third parties unauthorisedly to garner huge money, be closed and thereafter, it must be ensured that other than the official website of the temples, there shall not be any other website in existence to render any sort of service to the devotees. The services rendered by the administration of the temples to the devotees shall not be permitted to be done by any third party to secure unlawful gain".*



9.3. In the light of the aforesaid order / judgment of this court, we are of the view that though the respondents 9 and 10 have categorically stated that the person involved in the illegal collection of money under the guise of performing the poojas, rituals, etc., was removed from service and as of now, there is no complaint in whatsoever manner from the devotees, considering the seriousness of the allegation raised by the petitioner, it would be appropriate to issue the very same directions as stated above, in this writ petition as well. Accordingly, the temple authorities / respondent concerned shall follow the directions referred to above, in letter and spirit.

10.1. With respect to the second issue relating to removal of encroachment in the lands belonging to the mutt, it is to be pointed out that the Commissioner, HR and CE Department is conferred with powers to supervise the administration of the Mutts and ensure that the properties are not alienated or used for the purposes that are prejudicial to the interests of the Mutt. In this context, Section 33 is relevant, which reads as follows:

"33. Inspection of property and documents.—

(1) [The Commissioner] or any officer or other person deputed by the Commissioner] in this behalf, may, with due regard to the religious practice or usage of the institution, inspect all movable and immovable property belonging to, and all records, correspondence, plans, accounts and other documents relating to, religious institution.

(2) It shall be the duty of the trustee of the institution concerned and all officers and servants working under him, his agent and any person having concern in the administration of the institution, to afford all such assistance and facilities as may be necessary or reasonably required in regard to any inspection made in pursuance of sub-section (1) and also to produce for inspection any movable property or document referred to in sub-section (1) and to furnish such information as may be necessary in connection with such inspection, if so required.



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(3) Where in the course of such inspection, it appears that the trustee of the institution concerned, or any of the officers or servants working under him, his agent or any other person having concern in the administration of the institution, past or present, has misappropriated or fraudulently retained any money or other property or incurred irregular, illegal or improper expenditure, [the Commissioner may], after giving notice to the trustee or person concerned to show cause why an order of surcharge should not be passed against him and after considering his explanation, if any, by order, certify the amount so lost and direct the trustee or such person to pay within a specified time such amount personally and not from the funds of the institution. The procedure laid down in sub-section (3) to (7) of section 90 shall apply to the recovery of the amount of surcharge."

10.2. Further, the Commissioner also exercises control over alienation of immovable property belonging to the Mutt in terms of section 34 and the same is reproduced below for ready reference.

"34. Alienation of immovable trust property.—

(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by [the Commissioner] as being necessary or beneficial to the institution:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly consider by [the Commissioner]:

[Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government].

Explanation.—Any lease of the property above mentioned through for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

(2) When according such sanction, [the Commissioner] may impose such conditions and give such direction, as [he] may deem necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of a mortgage regarding the discharge of the same within a reasonable period.

(3) A copy of the order made by [the Commissioner] under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of a copy of the order, and any person having interest may within three months from the date of the publication of the order [appeal to the Court] to modify the order or set it aside.

[(4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable



property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions].

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(5) Nothing contained in this section shall apply to the imams referred to in section 41."

10.3. Apart from these general restrictions on utilization of the property belonging to Mutts, Chapter VII of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, concerns specifically with encroachments and its removal from the properties of religious institutions. Section 77 contains a *non-obstante* clause, which applies notwithstanding section 34 concerning alienation. Section 34 is a regulatory provision, while section 77 is prohibitory in nature. Section 77 prohibits certain conveyances by trustees of religious institutions and the same runs thus:

"77. Transfer of lands appurtenant to or adjoining religious institutions prohibited except in special cases.—

(1) Notwithstanding anything contained in section 34, no trustee of a religious institution shall lease or mortgage with possession or grant a licence for the occupation of—

(a) any land belonging to the religious institution which is appurtenant to or adjoins the religious institution, or any sacred tank, well, spring or water course, appurtenant to the religious institution whether situated within or outside the precincts thereof, or

(b) any space within or outside the prakarams, mantapams, courtyards or corridors of the religious institution ; Provided that nothing contained in this sub-section shall apply to the leasing or licensing of any such land or space for the purpose of providing amenities to pilgrims or of vending flowers or other articles used for worship or of holding for specified periods, fairs or exhibitions during festivals connected with the religious institution.

(2) Any lease or mortgage with possession or licence in contravention of the provisions of sub-section (1) shall be null and void.

(3) Notwithstanding anything contained in sub-section (1) or (2), [the Commissioner] may sanction the lease or mortgage with possession or granting of a licence for the occupation of any such land or space as is mentioned in sub-section (1) and situated outside the precincts of a religious institution for any purpose other than a purpose mentioned in the proviso to sub-section (1)."



10.4. Thus, any encroachment falling under the umbra of section 77 are dealt with in accordance with the sections 78 to 82. If the Assistant Commissioner, on his own volition or upon a complaint, has knowledge of any encroachment, he/she is required to intimate the Joint Commissioner along with a report. Upon the perusal of the report, the Joint Commissioner conducts an enquiry, after issuing notice hears the alleged encroacher and other parties interested. If the allegation of encroachment is found to be true, the Joint Commissioner has to direct removal of such encroachment in the manner provided thereunder.

10.5. Despite such powers on the HR&CE department, there are multiple instances of encroachment on lands belonging to religious institutions. This has been frowned upon by this Court in ***V. Muthusamy v. The Joint Commissioner of HR&CE Department, Chennai, [2018-1-Writ.LR.530]*** and ***P. Lakshamanan and Others v. the Superintendent of Police, Sivagangai [(2018) 3 MLJ 202]*** to name a few. Recently, in a decision in ***suo moto WP.No.574 of 2015 and WP(MD)No.24178 of 2018 dated 07.06.2021, reported in (2021) 5 MLJ 413***, rendered by one of us (RMDJ), while reiterating the purpose of lands belonging to temples and religious institutions and emphasising the importance of the state's responsibility in securing lands, it was observed as follows:

"30. At this juncture, it is needless to state that the properties of the temples/religious institutions belonging to them have to be maintained properly in order to derive more income so as to spend it for the betterment of the temples. The custodians of the temple properties are the trustees, HR&CE department and mutts, who must keep in mind the object and the reason behind such donations made to the temples. The endowments are created and the lands are donated in love, in faith and in satisfaction towards the one's contribution to the religion they profess, for the temples to be selfsufficient to perform all every day rituals, to ensure that people who profess and practice the same ideology and belief, are uplifted economically and spiritually and for.



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the subsistence of their religion. A duty is cast on the Commissioner under Section 23, to ensure that such temples and endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist and therefore, whenever any order is passed, the object of the endowment is not to be forgotten. Section 29 of the Act lays down the preparation of register for all institutions by the Commissioner. That apart, the Joint Commissioners are clothed with the power to retrieve the temple lands from the encroachers by exercising the powers under Sections 78, 79 and 80. But, the officials have not properly exercised the power conferred on them and they are in dereliction of duties and responsibilities assigned to them. At least from now, the HR&CE Department should act diligently to retrieve all the properties under the encroachments.

...

...

...

42. *The noble object behind the donation of the properties/lands in favour of the temples is only to protect the temples and to enable it to survive for several long years along with the heritage and culture of our land to the future generation. Throwing to winds, the temple properties/lands are being encroached, misappropriated and mishandled. Though several directions were issued by this Court, the process of identification of encroached lands and retrieval have not been undertaken swiftly and the officials are determined to do away with the lands for political or appeasement reasons contrary to the object of grant and in detrimental to the interest of the temples, which can only be termed as a step to slowly diminish the religious belief, tradition, culture and practices.....*

But, the statistical record reveals that out of 5.25 lakh acres of land, only 4.78 lakh acres are available as of now and the balance acres of land are in the hands of encroachers. It is significant to mention here that the HR & CE department is the custodian and administrator of the temples and its properties. But this department, to the knowledge of this Court, has not purchased even a small portion of land for the benefit of any temple. As administrator, the role of this department is much more responsible and the officials are culpable and liable to be punished in case of breach of their responsibility. The administrative right to deal with the temple properties is only to preserve and augment more revenue, implying that the temple lands ought not be alienated or given away. It is to be noted that the Government cannot claim right over the temple lands and the same cannot be a part of any Government scheme, otherwise, the very object of the creation of the HR & CE department would get defeated."

10.6. In the aforesaid decision, this court has ultimately, issued as many as 75 directions and the followings are with respect to recovery of temple lands:

"55...

LAND REVENUE, RENT, ARREARS, ENCHROACHMENTS ETC

(31) *The District Committees must take stock of the lands of all the temples within their respective District, list out the total extent with survey number and door number, vacant or leased, nature of land i.e agricultural or otherwise, current rent, date of fixation of rent, current market rent, name of lessee/tenant, duration of lease, whether*



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authorised by the Commissioner, if the period of lease is beyond 5 years, nature of the lessee whether individual, firm or company and in case, lessee is an individual, then the religion of such individual, arrears if any of each lessee with period of default, list of cases pending before any forum or Court regarding the rent or entitlement to lease, list of encroachers including sub-tenant and sub-lessees and status of action taken to remove the encroachers, list of temple lands conveyed and action taken to retrieve them and status of the criminal complaint lodged against illegal sale of temple land, if any and document the same properly. A detailed report also be filed before this Court within a period of twelve (12) weeks.

...

(33) The state Government or the Commissioner of the HR&CE department, who are the Trustee/administrator of the temple lands, shall not alienate or give away the lands contrary to the wish of the donor. The lands shall always remain with the temples. The public purpose theory shall not be invoked in cases of temple lands over which the interest of the community people of the religious denomination generally rests.

...

(35) The encroachment and illegal constructions in the protected area, archaeological sites, temple lands, etc., must immediately be removed. The extent of lands owned by the temples must be identified with the help of the revenue Department by the District Level Committee. The District Collector of the appropriate District, on the request of the Heritage Commission or State Committee or District Level Committees or by any officer of the HR&CE Department, shall forthwith take steps for the removal of any such illegal construction or encroachment or unauthorised occupants. Appropriate action must be taken against the errant Government officials of the central as well as state department and officers under the HR&CE department for not removing the encroachments in the protected and regulated area, within a period of eight (8) weeks on expiry of the time given.

(36) A list of defaulters with the arrears due from them must be prepared within a period of six (6) weeks and the same must be published in the website. Appropriate steps must be taken to evict them and recover the arrears as per the provisions of the HR&CE Act and the rules there under.

(37) The respondent authorities shall regulate the period of lease pertaining to the properties of the religious institutions and renewal of the same.

..."

10.7. In the instant case, the respondents 9 and 10 sought for appropriate direction to the third respondent, Commissioner of HR&CE Department, to remove the encroachment in the lands belonging to the mutt. Therefore, applying the aforesaid legal proposition, this court directs the respondent authorities to take appropriate action and remove the encroachments in the properties / lands belonging to the 9th respondent mutt, in the manner known to law, after following the directions issued in



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suo motu WP.No.574 of 2015 cited *supra*.

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11. In fine, this writ petition stands disposed of, in terms of the directions issued in paragraph nos.9.3 and 10.7 of this order. The said directions be complied with, within a period of 12 (twelve) weeks from the date of receipt of a copy of this order. Any failure on the part of the respondents will be viewed as contemptuous. No costs.

Post this matter after twelve weeks "for reporting compliance".

[R.M.D., J.] [J.S.N.P., J.]
28.04.2023

Speaking order / Non-speaking order

Internet : Yes.

Index : Yes / No

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- 2.The Secretary to Government,
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- 9.The Superintendent-cum-General Manager,
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Thiruvudaimaruthur - 612 104
Tanjore District.



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and
J.SATHYA NARAYANA PRASAD, J.

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