



**WP(MD)No.25220 of 2023**

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 27.03.2024  
Pronounced on : 10.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

**WP(MD)No.25220 of 2023 and  
WMP(MD)Nos.21407, 21408 and 22170 of 2023**

N.Sadayandi

... Petitioner

VS

- 1.The District Collector,  
Madurai District,  
Office of the District Collector,  
Madurai.
- 2.The District Collector,  
Virudhunagar District,  
Office of the District Collector,  
Virudhunagar.
- 3.The Joint Commissioner,  
HR and CE Department,  
Dindigul.
- 4.The District Forest Officer,  
Office of the District Forest Officer,  
Srivilliputhur Post and Taluk,
- 5.The Deputy Director,  
Office of the Deputy Director,  
Thiruvilliputhu Megamalai Forest Reserve,  
Thiruvilliputhur.



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6.The Superintendent of Police,  
Madurai.

7.The Superintendent of Police,  
Virudhunagar.

8.Arulmigu Sundara Mahalingaswamy Temple,  
Stahuragiri Temple,  
through its executive Officer,  
Virudhunagar.

... Respondents

[R.6 and R7 were *suo motu* impleaded vide order dated 17.10.2023 and R8 was impleaded vide order dated 20.11.2023 in WMP(MD)No.22170 of 2023]

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records relating to the impugned order passed by the 5<sup>th</sup> respondent vide his proceedings in Na.Ka.No.176/2023/M2, dated 01.09.2023 and quash the same as illegal insofar as the condition Nos.3, 4 & 7 are concerned and consequently to direct the official respondents to grant permission to the petitioner's community for conducting the traditional Arul Migu Ananthavalli Amman Navarathiri Festival at Sathuragiri for 10 days between 16.10.2023 and 24.10.2023 including staying there at nights during the last 3 days of festival within the period that may be stipulated by this Court.



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For Petitioner : Ms.H.Jasima Yasmin  
for Ajmal Associates  
For Respondent : Mr.M.Sarangan,  
Nos.1,2,4 & 5 Additional Government Pleader  
For Respondent : Mr.P.Subburaj,  
No.3 Special Government Pleader  
For Respondent : Mr.B.Thanga Aravindh  
Nos.6 and 7 Government Advocate (CrlSide)  
For Respondent : Mr.S.Manohar  
No.8

### **ORDER**

The petitioner claiming to be the President of Navarathiri Festival Committee of Saliyar Community of Srivilliputhur Taluk has submitted a representation requesting the respondents to permit Saliyar Community people to celebrate the Navarathiri Festival of Arulmigu Ananthavalli Amman temple situated in Sadhuragiri hills for a period of 10 days between 16.10.2023 and 24.10.2023. The said representation was considered by the respondents and vide the impugned order they have restricted this petitioner and their community to perform navarathiri festival in between 16.10.2023 and 24.10.2023, only for a period of three days with several conditions. Challenging the same this writ petition is filed.



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2.The learned Counsel for the petitioner submits that the people of saliyar community have been performing and celebrating navarathiri festival in Arulmigu Ananthavalli Amman temple attached to Sundara Mahalinga Swami temple, Sathuragiri for 11 days, every year. This navarathiri festival according to them has been performed in the said temple from time immemorial. The petitioner's counsel has relied on the Tamra Pattayam issued by the King Pandya during the 16<sup>th</sup> century in support of his claim.

3.The learned Counsel further submits that around 20,000 devotees from Srivilliputhur, Rajapalayam, Punnaveli, Sundarapaniam, Sathirapatti, Aruppukottai, Andipatti and from nearby villages participate in this festival. The petitioners claim that they have put up some constructions [mandapams] for their stay at night.

4.The learned Counsel further submits that the restriction of entry and stay in the temple has been imposed by the impugned order, pursuant to the notification of the government in the year 2021, declaring this area of temple as Tiger Reserve Forest. According to him these restrictions



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have been imposed from the year 2021, after declaration of this area as Tiger Reserve. The Sadhuragiri Sundara Mahaliga Swami Temple and Ananthavalli Amman temple are in existence from time immemorial. The temple and its surrounding lands belong to the Hindu Religious and Charitable Endowments Department [HE& CE Department]. They have been performing this festival from time immemorial and by issuing a government notification in the year 2021, there cannot be any restriction for the devotees to visit the temple and stay in the temple during the festival. The devotees are having every right to visit the temple and to offer their prayers as guaranteed under Articles 25 and 26 of the Constitution of India.

5.The learned Counsel for the petitioner further has referred to the permission granted to the devotees, who are visiting Arulmigu Sorimuthu Ayyanar Temple which is situated at Pabanasam mountain, which fall under the territory of Kalakad-Mundandurai Tiger Reserve. According to the learned Counsel thousands of the devotees participate in the Adi Amavasai festival in Arulmigu Sorimuthu Ayyanar Temple every year. Therefore it is unequal and discrimination on the part of



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respondents in refusing permission to the petitioner and their people to perform navarathiri festival, when similar permission is granted to other temples. Further he has also cited several such places in support of his contentions viz., Parambikulam Tiger Reserve, Kerala, Nagarhole Tiger Reserve, Karnataka, Corbett Tiger Reserve, Uttarakhand, Bandipur Tiger Reserve, Karnataka, Anaimalai Tiger Reserve, Coimbatore District, Periyar Tiger Reserve Kerala, Sundarban Tiger Reserve, West Bengal, Buxa Tiger Reserve, West Bengal, Valmiki Tiger Reserve, Bihar, Tadoba-Andhari Tiger Reserve, Maharashtra, Chinnar Wildlife Sanctuary, Idukki.

6.The learned Additional Advocate General appearing for the 4<sup>th</sup> respondent / Forest Department submits that this Sundara Mahalinga Swami Temple at Sadhuragiri hills is situated in Saptur Reserve Forest. Saptur Reserve Forest has been notified as Srivilliputhur Grizzled Squirrel Wildlife Sanctuary and now it is part of the Srivilliputhur-Megamalai Tiger Reserve. According to him the total area of Srivilliputhur - Megamalai Tiger Reserve is an extent of 1,01,657.13 hectares of which, 64,186.21 hectares is declared as core area of the



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Tiger Reserve. This Sadhuragiri hills falls under the buffer zone. Srivilliputhur Forest Division shares 18 Kms interstate boundary with the state of Kelara.

7.The learned Additional Advocate General further submits that devotees from all over Tamil Nadu in huge numbers visit this temple. There are frequent fire accidents and it can be correlated with the pilgrims visiting this temple every year. He further submits that there was an unfortunate flash flood due to heavy downpour on 17.05.2015 and around 4,000 pilgrims got stranded inside the forest and 15 pilgrims died in this incident. Consequently certain regulations were brought into force on 30.05.2015 that the public will be allowed through the permitted footpath from Thaniparai between 6.00 am and 4.00pm only on full moon, new moon and pradosam days. The public will not be allowed if there is any rain forecast on these days. The entry checking at Thaniparai entrance is made mandatory with the help of the Ecology Development Committee members from Thaniparai tribal hamlet. Therefore, according to him the entry of pilgrims to Sadhuragiri Sundara Mahalinga Swami Temple has been restricted. Even with these restrictions pilgrims were



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permitted for 76 days during January 2023 to September 2023 and 2,86,776 pilgrims from various communities have visited this temple.

According to him, the Forest Department is having a limited staff strength of 1 Ranger Officer, 2 Forester, 2 guards, 12 Anti-poaching Watchers and 15 Eco-Development Committee Members at Thaniparai. Therefore, the Forest Department finds it very difficult to regulate the night stay of the pilgrims inside the forest. If a particular community alone is permitted to stay in the temple at nights, it would pave way for others to seek such permissions. Further it may also promote human - wild life conflict and obstruct the ecological stability of the forest. People, if they are allowed to stay, they tend to cook and there is a possibility of wildfire.

8.The learned Additional Advocate General has relied on the provisions under Sections 27 and 28 of the Wild Life (Protection) Act, 1972 and submits that the Central Government has empowered Chief Wildlife Warden to restrict the entry inside the wild life sanctuary and regulate the grant of permit to enter or reside inside the wildlife sanctuary.



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9.The 6<sup>th</sup> respondent Executive Officer of the Sundara Mahalinga Swami temple has filed a counter affidavit stating that the petitioner community people have been performing navarathiri festival at Sadhuragiri temple for 10 days by staying in the temple premises. During Covid-19 they were permitted to stay for 3 days in the temple. They have not been permitted after Covid-19 pandemic. After the notification of the government notifying the area as Tiger Reserve in the year 2021, they were permitted to stay for 3 days in the year 2022. According to him S.Nos.517 and 518 in Sadhuragiri Tiger Reserve Forest are already declared as the land belonging to HR and CE Department. S.Nos. 517 and 518 to an extent of 63.76 acres is under the control of HR and CE Department as per the gazette notification No.9 dated 07.03.1979. The temples are situated in S.Nos.517 and 518 and there are few mandapams constructed with the permission of the HR and CE Department and these persons have been permitted to stay in the temple lands. He also admits that some mandapams have been constructed without the permission of the department and they are taking steps to remove those constructions by initiating proceedings under Section 78 of the HR and CE Act.



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10.This Court considered the rival submissions and perused materials placed on record.

11.The petitioner is a representative of a community / the devotee of Sadhuragiri Sundara Mahalinga Swami temple and they claim that from time immemorial they have been performing navarathiri festival for a period of 10 days in Anathavalli Amman the temple. The petitioner claims that their right from Tamra pattaiyam issued by King Pandya during 16<sup>th</sup> century.

**12. Sundara Mahalinga Swamy temple, Sadhuragiri- History:**

(i) Sadhuragiri hill is situated near Vathirairuppu of Srivilliputhur Taluk, Virudhunagar District. This hill is surrounded by four hills,viz., Sivagiri, Krishnagiri, Brammagiri and Siddha giri. Since it is surrounded by four hills and it is in square shape, it is called Sadhuragiri [Sadhuram – Square]. These Sundara Mahalinga Swami temple and Santhana Mahalinga Swami temple are situated in the western ghats. It forms part of Saptur Village. It is 3000 ft high from the sea level and 5.5 kms high from the plains of Thaniparai.



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(ii) The Sadhuragiri hill is said to be the abode of Lord Shiva. Saivaite believe this hill as South Kailash. The deities of Sundara Mahalinga Swami temple and Santhana Mahalinga Swami temple are believed to be Svayambu (self-manifested / self-born). Behind Sundara Mahalinga Swami temple, Anandavalli Amman temple is situated. Anandavalli Amman is formless and she is said to take form only during navarathri. These temples are believed to be in existence for more than 2500 years.

(iii) The Sundara Mahalingam is said to be an Anidai Lingam i.e., a Lingam worshipped by the Siddhas. People believe that 18 renowned Siddhas are still present in and around these temples in an invisible form. This Sadhuragiri is referred to as 'Siddhargal Boomi - land of saints'.

13.Saptur Village in Madurai District in S.No.518 to an extent of 47,168 acres along with some other lands have been declared as reserve forest by the State Government under Section 16 of the Tamil Nadu Forest Act, vide GO.Ms.No.77 Forest and Fisheries Department dated 02.07.1979. The same was declared as Srivilliputhur Grizzled Squirrel Wildlife Sanctuary in the year 1988 vide GO.Ms.No.399 Environment



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and Forest Department dated 26.12.1982. The Central Government sponsored a scheme viz., Project Tiger. The Government of India, Ministry of Environment and Forests and Climate Change vide DO letter dated 22.11.2011 has informed the Principal Chief Conservator of Forest that in the event in the adjacent reserve forest namely Srivilliputhur Grizzled Giant Squirrel Sanctuary at Srivilliputhur and Megamalai Wildlife Sanctuary of Theni Forest Division added with Periyar Tiger Reserve, the government of Tamil Nadu would get central assistance under the scheme Tiger Project. Accordingly the proposal was made by the Principal Chief Conservator of Forests to the Government on 03.09.2018 for formation of Srivilliputhur-Megamalai Tiger Reserve as 5<sup>th</sup> Tiger Reserve and has requested the government to recommend the same to the National Tiger Conservator for approval as required under the Wildlife (Protection) Act. The Grizzled Wildlife Sanctuary at Srivilliputhur was established to protect vulnerable giant squirrel in area of 485.2 sq.km. It is bordered on the south west by Periyar Tiger Reserve.

14.The Government of Tamil Nadu by its notification vide GO.Ms.No.77, Forest and Fisheries Department, dated 02.02.1979 has



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declared S.No.518 of Saptur Village to an extent of 47,168 Acres and S.No.756 of Mallapuram, S.No.1/1 of Sandaiyur as reserve forest with effect from 01.05.1979. The land in S.Nos.518 and 517 of Saptur Village to an extent of 10 Acres is classified as Sundara Mahaligna Swamy temple and the footpath measuring an extent of 63.76 acres were exempted in the notification that these are patta lands of Sundara mahalinga swamy temple [Trustee Kulandhaiyanandha sami], which is under the control of the HR and CE Board. The footpath leading to the temple in S.F.No.517 western corner of SF.No.1223, No.4 Maharajpuram village and S.Nos.517 and 518 of Saptur Village were already exempted from the notification and the same is extracted as under:

*“Rights Admitted – The Arulmigu Santhanamahalingasamy temple is demarcated out of reservation and retained as enclosures with the reserved forest free from reservation.*

*Arulmigu Santhanamahalingaswamy temple situated in S.No.518 of Saptur village with an area of 10 acres (4.05 hectares) including the temple with the following measurement:*

*North - 1,00 links (221.10 metres)*



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*East - 550 Links (110.55 metres)*

*South – 1,315 Links (264.32 metres)*

*West – 1,150 Links ( 231.15 metres)*

*With an access by a footpath from the diversion point of the existing footpath to Saptur from Arulmigu Santhanamahalingasamy temple towards north-western direction for a distance of 950 links (190.95 metres)*

*The following public right of way has also been allowed:*

*Footpath leading to Arulmigu Santhanamahalingasamy temple from the diversion points of the existing footpath to Saptur from the Arulmigu Santhanamahalingaswamy temple.*

*Footpath enters the forest block on the north-eastern corner of S.F.No.517 classified as Sundaramahalingasamy temple.*

*Note: The area under S.F.No.517 measuring an extent of 63.76 acres (28.80 hectares) has already been treated as patta Sathuragiri Mahalingasamy temple (Trustee Kulandaiyanandasamy) which is under the control of the Hindu Religious and Charitable Endowments Board.*

*The footpath leading to the temple in the area under S.F.No.517 enters the forest block from the north-western corner of S.F.No.1223 of No.4, Maharajpuram*



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*village and runs towards north through the forest block and reaches the entrance of the area under S.F.No.517 of No.183 Saptur Village. It has been allowed to worship the deity by the public.”*

15.This land in Saptur Village was later notified as Srivilliputhur Grizzled Squirrel Wildlife Sanctuary in the year 1988 vide G.O.Ms.No. 399 Environment and Forests (FR.5) Department dated 26.12.1988. Subsequently this land has been notified as Srivilliputhur-Megamalai Tiger Reserve in the year 2021, vide GO.Ms.No.14 Environment and Forest (FR.5) Department, dated 08.02.2021. Since the surrounding lands of this temple in Saptur Village are now declared as Srivilliputhur-Megamalai Tiger Reserve, the Forest Department is imposing restrictions for entry in the temple. Perusal of this GO.Ms.No.14 dated 08.02.2021, it appears that this reserve forest has been declared as Tiger Reserve in order to get benefits from the Project Tiger. This government order does not disclose a study if any made by the Forest Department to covert the Grizzled Giant Squirrel Sanctuary into a Tiger Reserve.



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16.From the available materials, it appears that this area has been added as Tiger Reserve as a Buffer area. This Sundara Mahalinga Swami temple is situated in S.Nos.517 and 518 of Saptur village to an extent of 63.76 acres, which were already exempted in the notification in G.O.Ms.No.77 Forest and Fisheries Department dated 02.02.1979. The footpath leading to the temple in the area under S.No.517, which falls under the forest block from the north-western corner of S.No.12.23 No.4, Maharajpuram Village and S.No.183 of Saptur Village has been allowed to the public by the said notification to worship the deity.

17.This right, which has already been confirmed vide the government order in GO.Ms.No. No.77, while holding this land of Saptur as reserve forest, has been given effect scrupulously and the devotees have been permitted to visit this temple without any restriction by the forest department. However it appears in the year 2015, in a joint meeting conducted by the forest department with the district administration, it was decided to impose some restrictions to the devotees, due to death of 15 pilgrims on 17.05.2015, because of flash flood, following heavy downpour and consequently certain regulations



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were effected in the district co-ordination committee meeting held on 30.05.2015, which is stated by the respondents in their counter as under:

*“The following regulations were brought in force based on two district co-ordination meeting held on 30.05.2015.*

*i. Public allowed through permitted footpath starting from Thaniparai between 6 am to 4 pm only on full moon, new meen and pradosam days.*

*ii. Public will not be allowed if there is rain forecast during the above days.*

*iii. Entry checking at Thaniparai entrance is made mandatory with the help of EDC members from Thaniparai tribal helmet.*

*iv. Entry only in the presence of Forest, Police and Fire Staff at vulnerable locations viz., Thaniparai falls, Mankanioothu, Sakiliparai, Retailingam, Konathalaivasal, Korakonda, Chinnapasukidai and Pilavadikarupasamykoil etc.,*

*v. Ensuring effective co-ordination between Madurai and Virudhunagar districts officials concerned as foothills in Virudhunagar district and forest temple enclosure is located in Madurai district.”*



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18.It appears that these regulations have been brought in, from the year 2015, pursuant to the incident took place on 17.05.2015. Even as per the counter affidavit filed by the 4<sup>th</sup> respondent, the Forest Department and 4,000 pilgrims visited this temple on that particular day, they got stranded inside the forest and 15 pilgrims died due to flash flood. The counter statement filed by the 4<sup>th</sup> respondent discloses that there was no such restriction for the public to visit the temple from 1979 to 2015. The surrounding lands in Saptur Village were declared as forest land with effect from 02.02.1979, but there was no restriction for the devotees, after the notification citing this declaration. The right of these pilgrims to visit this temple had already been ensured in GO.Ms.No.77 Forest and Fisheries Department, dated 02.02.1979.

19.The HR and CE Department has also produced the announcement made on the floor of the assembly by the Hon'ble Chief Minister for the year 2022 - 2023 and the government has announced that development works such as construction of bridges near the temple would be carried out at an estimated cost of Rs.9 crores to ensure no such incidents, which took place in the year 2015, recur in



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future. The announcement made by the government for the HR and CE Department is extracted as under:

*“Development works including the construction of bridge near Arulmigu Sundaramahalinga Swamy temple Sadhuragiri, Madurai will be carried out at an estimated cost of Rs.9 crore.”*

20. Though the lands in Saptur Village were termed as reserve forest in the year 1979 vide notification dated 07.03.1979, the lands in S.Nos.517 and 518 to an extent of 63.7 acres have been exempted and declared that it is patta lands of Arulmigu Sundara Mahalinga Swami temple, which is under the control of HR and CE Department. The right of access to the public to the temple is also ensured in the notification dated 07.03.1979.

21. When the right has already been confirmed for the public by the Government vide the notification dated 07.03.1979, to reach the temples, the Forest Department cannot restrict the entry of public, who are visiting the temple and their stay in the temple.



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22.The petitioner has relied on the Articles 25 and 26 of the Constitution of India. Every citizen is entitled to free conscience and a right to profess, practice and propagate religion as guaranteed under Articles 25 and 26 of the Constitution of India. Any religious denomination or any section are provided right to establish and maintain religious institution for religious and charitable purposes to maintain its own affairs and religion.

23.The respondents have relied on Article 48(A) in Part IV of the Constitution of India, which is a directive principle of State Policy that the government shall endeavour to protect, improve and safeguard forest and wildlife of the country. Certain Fundamental duties are enshrined in Part VI A of the Constitution. 51(A) g of the Constitution prescribes certain duties to value, protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.

24.Before going into the contention of the petitioner that they are deprived of the fundamental rights guaranteed under Article 25 and 26 of



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Constitution of India and the contention of the respondents that there is a duty cast upon under Article 48(A) and 51(A)g of the Constitution of India, it would be relevant to refer to the judicial pronouncements on the constitutional rights of the citizens and the constitutional obligations on the part of the State.

25.This court in ***Kalyan Dass Vs State of Tamil Nadu and another*** reported in ***AIR 1973 Madras 264*** has held as follows:

*“3.Before considering the question involved, it is necessary to understand what is religion, Hindu Religion and a Hindu temple is, and what are its ceremonial precepts. The substratum of any religion lies in the rocky foundation of its ancient beliefs, rituals and practices. Religion is ordinarily referable to the expression of man's belief in and reverence for a superior human power recognized as creator and governor of the universe. Sanctimoniousness is not a necessary creed annexed to a firm religious tenet. But Hindu religion, whose origin is so ancient has maintained throughout, its ethics, practices and mandates, that they have lived to every changing times, but maintaining at all times its pristine usefulness and its inhered capacity to demand respect and*



reverence to such tenets. The varied facets of such respectable practices is demonstrated in our Puranas, which continue even now as divine guidelines for emancipation. ***But what was achieved by meditation in Kritayuga, by various sacrifices in Tretayuga, by personal service in Dwaparyuga, can be obtained in Kaliyuga by constant worship and strict adherence to immemorial religious practices. One such accredited practice in Hindu religion is worship in temples and that too in a prescribed manner. If there are certain well-laid practices regarding the mode of worship in a Hindu temple and if such ordainments are backed up by Agamas and therefore, are matters connected with the religion, it is not for law courts to lightly ignore such deep-rooted and venerable tenets on the only ground that progressive secularism demands it or logic frowns at it or modern rationalistic enlightenment or civilization does not accept it. I am bound to quote in extenso passages from the dicta of the Supreme Court to support the view that religious practices are reflective of matters concerning religion and if religion is to be venerated, then the practices annexed thereto are equally respectable and they demand compliance, even under our Constitution.***



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4. *The first aspect which highlights the discussion is what is religion. The Supreme Court in Commissioner, H. R. E. v. Lakshmindra Thirtha Swamiar of Shirur Mutt, says: "Religion is a matter of faith with individuals or communities and it is not necessarily theistic. 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 the Constitution of India not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression "practice of religion" in Article 25. What constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, the 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, all these will be regarded as parts of religion and the mere fact that they involve expenditure*



*of money of employment of priests and servants or the use of marketable commodities will 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). The language of Article 25 and 26 Constitution of India is sufficiently clear to enable the Court to determine as to what matters come within the purview of religion and what do not. **Freedom of religion in the Constitution of India is not confined to religious beliefs only. It extends to religious practices as well as subject to the restrictions which the Constitution itself has laid down.** Under Article 26(b), therefore, as religious denomination or organization enjoys composite autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters."*

**26. In Amarnath Shrine In Re (Court on its own motion) Vs Union of India and Others reported in (2013) 3 SCC 247** the Hon'ble Supreme Court while taking judicial note of the poor arrangements and



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number of deaths occurred during the Yatra in the year 2012 to the Holy Cave of Amarnath, by constituting a special committee and based on its report, has given a number of directions to the Central and State Governments and to the Shrine Board with regard to the Health issues; Environmental issues; Registration, access control and security; Track conditions; Other public amenities, in the larger interest of public as well as to uphold the rule of law and to ensure the protection of rights of general public on the one hand and discharge of their obligations on the other, while ensuring balanced sustainable use of environment by the governments. Wherein the Hon'ble Supreme Court by referring to its various orders has held as follows:

***“ This Court has repeatedly held that in terms of Article 21 of the Constitution of India, a person has a right to live with dignity and not be subjected to inhuman treatment, particularly in such places where large number of people are bound to visit because of their faith.***

***The yatris do have a right and the State is under constitutional obligation to provide safe passages, proper medical aid, appropriate arrangement and at least some shelter to the thousands of yatris visiting the***



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*holy cave everyday. They are also expected to equip the forces deployed with appropriate equipment, facilities and the authorities should ensure that no untoward incident at the holy places.*

*It is expected of a Government and the concerned authorities to devote more attention and provide appropriate amenities and facilities to protect the life of the individuals, the environment as well as ensure to make the yatra effective and successful, preferably without any human casualty. The authorities cannot shirk from their responsibility of providing minimum essential facilities including medical assistance, roads and other necessary infrastructure.*

*It is a settled canon of constitutional law that the doctrine of sustainable development also forms part of Article 21 of the Constitution. The 'precautionary principle' and the 'pollutor-pays principle' flow from the core value in Article 21.*

**27.** The Hon'ble Supreme Court in **Sarika v. Administrator, Mahakaleshwar Mandir Committee, Ujjain (Madhya Pradesh) And Others** reported in 2020 INSC 528 held that the State has a constitutional



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obligation to invest fund for protection and preservation of not only ancient monuments and structures including temples of archaeological and historical importance, but also of sanctum sanctorum and 'deity' of spiritual importance. State has to ensure that Puja or Prayer Ceremonies are performed in a manner which is befitting to the deity and protects the infrastructure which is linked to the preservation of the deity.

28. The judicial pronouncements cited above have settled the principles as follows:

- The Preamble to the Constitution secures all citizens of this country to liberty of thought, expression, belief, faith and worship.
- The practice in Hindu Religion is worship in temples and that too in a prescribed manner. If there are certain well-laid practices regarding the mode of worship in a Hindu Temple, it has to be followed. The religious practices, such as rituals and observances, ceremonies and modes of worship are integral part and reflective of religion. They should be regarded as matters of religion within the



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meaning of Article 26(b) of the Constitution.

- Article 25(1) of the Constitution gives protection to the right of a devotee to worship a deity in accordance with the tenets of that faith or shrine.
- Part III of the Constitution gives fundamental right to practice one's religion.
- Interference of the State in the right guaranteed under Articles 25 and 26 is not permissible, except as provided by Article 25(2)(b) of the Constitution, where the State may make law providing for social welfare and reform.
- Article 48A mandates the government to protect and improve the forest and environment. At the same time, the government has the responsibility to provide appropriate amenities and facilities to protect the life of the individuals and the environment. It is also the responsibility of the State to provide security to all citizens without violating human dignity.



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- The doctrine of sustainable development also forms part of Article 21 of Constitution.
- The Constitution also guarantees every citizen a right to move free throughout the territory of India, under Article 19(1)(d) of the constitution.
- The onerous duty lies upon the State to ensure protection of environment and forests on the one hand and to undertake necessary development with due regard to the fundamental rights and values. The appropriate balance between different activities of the State is the very foundation of the socio-economic security and proper enjoyment of the right of life.
- Therefore it is clear that the rights of the citizens guaranteed under Articles 19(1)(d), 19(5), 21, 25 and 26 of Constitution of India have to be protected by the State as there is a constitutional obligation on the part of the State and at the same time the law also casts duty upon the State to ensure due



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protection to the forests and environment of the Country.

- The devotees do have a right and the State is under constitutional obligation to provide safe passages, proper medical aid, appropriate arrangement and at least some shelter to the thousands of devotees visiting the temple. They are also expected to equip the forces deployed with appropriate equipment, facilities and the authorities should ensure that no untoward incident at the holy places.
- The State cannot, citing the environment and forest completely shut the right guaranteed under the constitution but can impose reasonable restrictions to discharge their Constitutional Obligation to protect
- If judicial review is done on the religious practice, it would negate the right of freedom to practice one's religion, guaranteed under the Constitution.
- The doctrine of sustainable development and



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precautionary principle would be the guiding factors for the courts to pass appropriate orders.

29. Therefore, the contention of the petitioner that by imposing such restrictions by the department to visit the temple and to worship the deity as per the practice, customs, belief, faith, their right guaranteed under the Constitution of India is interfered with, is acceptable. Though the respondents claim that there is an obligation on them to protect the forest and environment as per the Wildlife (Protection) Act and as mandated under the Constitution, they have to strike the balance by protecting the rights of the citizens guaranteed under the Constitution and by discharging the constitutional obligation to protect the forest and environment. The Hon'ble Supreme Court in Amarnath Shrine's case cited supra, has issued several directions to the governments and the shrine board with regard to the Health issues; Environmental issues; Registration, access control and security; Track conditions; Other public amenities in the larger interest for the welfare of the devotees / yatris. It also held that the yatra to the 'Holy Cave of Amarnath' is an occasion of privilege and pride for a devotee. Likewise, it is also an occasion of



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privilege and pride for the devotees to go on pilgrimage to the Sadhuragiri hills.

30.This Court in a similar writ petition filed by another devotee of the temple has allowed the writ petition taking note of the fact that activities in reserve forest has been permitted in places like Sabarimala which is a Tiger Reserve Forest, where lakh of devotees are visiting every year.

31. In this case, when the right has already been confirmed for the public by the Government vide the notification dated 07.03.1979, to reach the temples and offer their worship, the Forest Department cannot restrict the entry of public, who are visiting the temple and their stay in the temple, depriving their right as confirmed in the government notification dated 07.03.1979 and the rights guaranteed under Constitution of India, as discussed above, the impugned order is liable to be set aside as violative of the constitutional rights.

32.In the light of the above discussion and in the public interest, this Court is of the view that a new set of guidelines with reasonable



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restrictions have to be issued by the HR and CE Department in consultation with the Forest Department for the devotees, who are visiting this temple, which shall also include the following:

1. Devotees should be allowed from 6.00 am to 10.00 am through forest check post to worship the deity daily.

2.The entry should be strictly closed at 10.00 am, enabling the devotees, to safely reach the foothills by 4.00pm, after their dharsan.

3.Head counting should be done both at the entry and the exit level, to ensure no one stays back in the hill without any permission, during the night hours. If anyone stays back without permission in the hill, he / she must be arrested and the Forest Department should prosecute them under the relevant laws in force.

4.The pilgrims should stick on to the permitted trekking path only and they should not deviate from the trekking path and enter any place in the forest.

5.During festival days the temple administration



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should make arrangements to complete the festival. Devotees should not be allowed to stay in the hill during night hours without permission or after the festival is over.

6. During adverse seasonal / weather conditions, the HR and CE Department should take the assistance of the district administration with regard to allowing the pilgrims to trek the hill for worship. The decision of the district administration shall be final.

7. Littering in the trek path and its surroundings must be prohibited.

8. Polythene, Plastics, matchsticks, flammable and combustible materials shall be prohibited.

9. The Forest Department shall establish a frisking point at check posts at the entry point. Devotees shall be subjected to thorough checking and any prohibited materials shall not be allowed to be carried out.

10. Adequate CCTV cameras shall be installed at the cost of the HR and CE Department, with an access to the



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Forest Department to monitor the movements and activities of the devotees to prevent any illegal activities in the forest area or any other criminal activities on the way to the temple by the devotees.

11.The HR and CE Department shall ensure sufficient water facility is made available to the devotees.

33.In addition to the above, this Courts issues the following directions to the HR and CE Department and the Forest Department:

(i) Since the right of pathway has been permitted in the earlier notification dated 02.02.1979 and the government has announced on the floor of assembly that developments would be carried out at an estimated cost of Rs.9 crores, necessary proposal for constructing bridges in the crucial points as announced in the floor of assembly by the government has to be forwarded by the HR and CE Department to the Forest Department without any further delay, within a period of four weeks from the date of receipt of a copy of this order.



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(ii) On receipt of such proposal the Forest Department shall take a decision considering the right of the devotees and the department already confirmed vide government order in GO.Ms.No.77 Forest and Fisheries Department dated 02.02.1979 and pass suitable orders within a period of twelve weeks from the date of receipt of those proposal.

(iii) Construction if any has to be made in consultation with and with the help of the Forest Department without any hindrance to the activities of the Forest Department.

(iv) The Forest Department shall deploy more number of Forest Watchers, Anti-poaching Watchers, Eco-Development Committee Members at Thaniparai and also on the way to the temple to monitor the movements of the devotees and to prevent any illegal activities in the forest area. The expenses for additional appointment of forest officials and the expenses if any required for the Eco-Development Committee has to be met out by the HR and CE Department. The right and sentiments of the devotees are important than the expenses to be incurred by the HR and



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CE Department.

(v) The HR and CE Department has to take necessary steps under Section 78 of the HR and CE Act to remove the encroachments if any unauthorisedly made by anyone in the patta lands of the HR and CE Department, within a period of twelve weeks from the date of receipt of a copy of this order.

34.This writ petition is allowed in the above terms. No costs.

Consequently connected miscellaneous petitions are closed.

10.12.2024

DSK



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To

1. The District Collector,  
Madurai.
2. The District Collector,  
Virudhunagar.
3. The Joint Commissioner,  
HR and CE Department,  
Dindigul.
4. The District Forest Officer,  
Office of the District Forest Officer,  
Srivilliputhur Post and Taluk,
5. The Deputy Director,  
Thiruvilliputhu Megamalai Forest Reserve,  
Thiruvilliputhur.
6. The Superintendent of Police,  
Madurai.
7. The Superintendent of Police,  
Virudhunagar.



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**B. PUGALENDHI , J .**

dsk

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**10.12.2024**