

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on: 31/8/2018

Pronounced on: 09 /11/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.21840 of 2018

Sendalankara Jeer Trust  
rep. Through its Secretary  
Mr.A.Krishnamachari  
214 East Uttara Street  
Srirangam  
Trichy 620 006.

... Petitioner

Vs

1. The Commissioner  
Hindu Religious & Charitable  
Endowment Department  
119 Uthamar Gadhi Salai  
Nungambakkam  
Chennai 600 034.

2. The State of Tamil Nadu  
rep. By its Secretary  
Religious Endowments  
Tamil Development and  
Information Department  
Chennai 600 005.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, to call for the records of the first respondent in Notification Na.Ka.No.57789/2015/Y2 dated 14/2/2017 and quash the same, in so far as its application to non-heritage and non-ancient temples under the administrative control of the first respondent.

For petitioner ... Mr.S.Sridharan

For respondents ... Mr.P.H.Aravind Pandian  
AAG  
for Mr.M.Maharajan  
Spl.G.P. (HR & CE)  
for R.R.1 and 2.

O R D E R

(Order of the Court was made by Subramonium Prasad, J)

Petitioner a registered Trust, under the Indian Trusts Act, 1882, has filed the instant writ petition, to protect the interest of the general public devotees.

2. According to the petitioner, Government have issued a notification dated 14.02.2017 bearing in Na.Ka.No.57789/2015/Y2, which is applicable only to ancient temples of heritage value.

3. Notification in Na.Ka.No.57789/2015/Y2, dated 14/2/2017 issued by the Government of Tamil Nadu, reads as under:-

Sub: HR & CE Dept - Renovation and Maintenance of ancient and heritage temples without damaging the heritage in Tamil Nadu under the control of HR & CE Dept - Establishment of Regional and State Level Heritage Screening Committee for considering estimates for the renovation works and recommending the estimates for approval.

Ref: 1. Government Order (Nilai) No.264  
Tourism, Culture and Endowments (ani.1.I) Dept  
1.11.2016

2. This office's Na.Ka.No.57789/2015-2/Y2  
dated 25/1/2017.

"HR & CE Dept has in its control ancient and heritage temples in Tamil Nadu. For renovation and maintenance of ancient and heritage temples without damaging the heritage, Regional and State level heritage Screening Committees have been established on the basis of the Government Order under reference No.1 above. The said Heritage Screening Committees will consider the estimates for the renovation works of the ancient and heritage temples, on the basis of the necessity and speciality of the works to be undertaken, and recommend such estimates for approval. The Joint Commissioners have been advised as per order under reference No.2 above to operationalise the State Level Heritage Screening Committees.

Prescribed guidelines have been given hereunder on various aspects of the renovation and maintenance works of temples, such as: selection of renovation works, identification, execution method and implementation, setting the desired quality

standard of work, and inspection of works for its quality. You are advised to supervise the works whether they are carried out as per the said guidelines.

#### Research & Documentation:

- \* Heritage value of the temple is to be determined on the basis of the temple's history, architecture, culture, inscriptions, archaeology, etc.

- \* The damages caused to the temple building, stone roof beams, cracks in pillars, damages due to rain water drainage system, plant growth are to be ascertained.

#### Deficiency Determination

- \* Wear and tear identification, stability of the construction, factors causing damage to the construction, environmental effect of construction and other deficiency in the construction need to be determined.

- \* Damages caused to the religious/cultural aspects of the temples need to be ascertained after consultation with Archaeological experts, museum and safety technology experts, sthapani and agama experts

#### Policy Formulation

- \* A full pledged policy is to be formulated after detailed documentation, inspection of buildings and getting advice from all the concerned persons.

#### Policy Implementation

- \* Policy will be implemented through Balalaya sthapanam, consultation with agama experts on the damages caused to the idols and pooja materials and maintenance procedures and policies.

\*Policy needs to be reviewed after considering the benefits of the maintenance procedures adopted, and accordingly, the implementation policy may be

modified.

The above guidelines will be implemented on the advice of the expert team.

Estimates for all the works (repair and renovation) including sponsored works in the temples under your zone should be sent to the consideration and approval of the Regional Level Heritage Screening Committee. Estimates approved by the Regional Level Heritage Committee should be sent to the Commissioner for in-principle approval. You may approve and implement the estimates which have got in-principle approval by the Commissioner.

Therefore, it is hereby informed that from this date, no repair or renovation works should be carried out in any of the temples under your zones without obtaining prior approval of the Heritage Committee as stated above. Further, Regional Joint Commissioners are advised to instruct their deputies to adopt the above guidelines in all the temples under their jurisdiction and implement them. Further, Regional Joint Commissioners will be held responsible for all repairs and or renovation works done in any of the temples under the jurisdiction without obtaining the prior approval of the Regional Heritage Committee in the manner indicated above.

Further, you are advised to acknowledge the receipt of this letter.

This is very urgent."

(emphasis supplied)

3. According to the petitioner, Notification is primary for renovation and maintenance, for ancient and heritage temples, without damaging the heritage value of the said building. The said Notification prohibits all renovation and repair works in temples of Tamil Nadu, without obtaining prior approval from the Government. According to the petitioner, though the said Notification is only for ancient and heritage temples, it actually states that no repair or renovation work should be carried out in any of the temple, without obtaining prior approval of the Heritage committee. It is the case of the petitioner, such of those temples, which are not ancient and heritage temples should not require the approval of the Heritage

Committee.

4. The petitioner would further state that HR & CE Department has about 36,000 temples in its control and out of 36,000 temples, about 34,000 temples are in small villages. They are established by the Villagers to fulfil the needs of the local population and these temples are not ancient and do not have any heritage value attached to them. According to the petitioner, if any of these temples require any renovation, they should not be asked to wait, till approval is granted by the Committee. According to the petitioner, last paragraph of the above mentioned Notification, is contrary, to the purpose, for which the Notification brought out, which was preservation for the heritage temples.

5. On notice, the Joint Commissioner (Legal), HR & CE Admn., Department, Chennai 34, has filed its counter. Paragraph No.7 of the counter reads as under:-

"It is submitted that as directed by the Government, this first respondent herein has prescribed the procedures and sent the impugned communication to all the Joint Commissioners of this Department to implement the said Government Order. It is submitted that the procedure to identify in carrying out all kind of Thiruppani Renovation works in all temples under the control of the HR & CE Department, is that the concerned temple have to approach the Regional Level Heritage Screening Committee with proposals who shall examine the Ancientness/Historical value/Archaeological and Architectural value of the temple and determine the works to be carried out and recommend the proposal for examination of the Expert Committee constituted by this Hon'ble Court. The Expert Committee will make its recommendation for, if the temple is more than 100 years old and it will decline to make any recommendation with remarks as "outside the purview of the Committee" if the temple is below 100 years old.

It is also very essential that all the procedures as enumerated in "The Management and Preservation of Properties of Religious Institutions Rules" have necessarily and strictly to be followed. It is also submitted that to verify and found out whether any temple is of historical, ancient, archaeological and heritage value or not, it requires to be examined by the Archaeologist either from the Archaeological Survey of India or State Archeology Department and considered by the Regional Heritage Screening

Committee and subsequently by the Expert Committee constituted by this Hon'ble Court.

Therefore, it is submitted that if a temple is of ancient, historical, archaeological, architectural and heritage value or not, invariably all Thiruppani renovation works may be placed before the Regional Level Heritage Screening Committee as constituted in G.O.Ms.No.264, Tourism, Culture and Religious Endowments Department, dated 1/11/2016 and then placed before the Expert Committee constituted by this Hon'ble Court for examination and to recommend to the appropriate authority for further action. Therefore, the impugned communication does not suffer from any infirmity and hence it is not liable to be quashed. The petitioner has misconstrued the impugned communication as if it applies to only ancient temple alone and hence the writ petition is liable to be dismissed as such. It is submitted that similar writ petition in W.P.(MD) No.16158 of 2018 is also pending before the Madurai Bench of this Hon'ble Court."

6. A reading of paragraph 7 would show that prayer sought for in the writ petition stands answered. It is very clear that though temples which are not more than 100 years old will not be covered under the purview of Notification. But the issue as to whether the temple is ancient or having heritage value or not has to be decided only by the Committee and not by anyone else. Only the Committee will examine the archaeological and architectural value/ancientness of the temple and arrive at a conclusion, as to whether permission is required or not.

7. In view of the above observation and in view of paragraph 7 of the counter affidavit, Writ petition is disposed of. No costs.

Sd/-  
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

mvs/gsp

To

1. The Commissioner  
Hindu Religious & Charitable Endowment Department  
119 Uthamar Gadhi Salai

Nungambakkam  
Chennai 600 034.

2. The Secretary  
State of Tamil Nadu  
Religious Endowments  
Tamil Development and Information Department  
Chennai 600 005.

+1cc to Special Government Pleader SR.No.77095

Writ Petition No. 21840 of 2018

NMI (CO)

GMV (26/11/2018)



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