

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.07.2018

DATE OF DECISION : 14.09.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.14205 of 2018

Maha Thejo Mandala Sabha
A Society registered under
Tamil Nadu Societies Registration Act
(Regn.No.15/1988)
rep.by its Secretary M.Jayaraman
having office at
No.7/18, Crystal Garden II Street
Nowroji Street, Chetpet
Chennai 600 031 ... Petitioner

-vs-

1. The Assistant Commissioner
H.R. & C.E. Department/Fit Person
Sri Mayuranatha Swami Temple
Mayurapuram, Thiruvannamiyur
Chennai 600 041, Tamil Nadu
2. The Executive Officer
Sri Pamban Kumara Gurudasar Temple
@ Sri Mayuranatha Temple
Mayurapuram, Thiruvannamiyur
Chennai 600 041, Tamil Nadu
3. The Deputy Commissioner
H.R. & C.E. Department
Chennai 600 034, Tamil Nadu
4. The Commissioner
H.R. & C.E. Department
Chennai 600 034, Tamil Nadu ... Respondents

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Mandamus, directing the
respondents to hand over to the petitioner the possession and
management of the affairs of Sri Pamban Kumaraguru Dasar
Swamigal Samadhi with properties movable and immovable and
land and buildings in acre 3.02 comprised in Paimash No.967,
Survey No.172/2A, Mayurapuram, Thiruvannamiyur Village, Chennai
600 041 and to refrain from interfering with the performance
of the religious and spiritual rituals by the petitioner in
the Samadhi of Sri Pamban Kumaraguru Dasar Swamigal.

For Petitioner :: Mr.R.Thiagarajan
Senior Counsel for
Mr.T.M.Hariharan

For Respondents::Mr.S.R.Rajagopal
Additional Advocate General
assisted by Mr.M.Maharaja
Special Government Pleader
for R1, 3 & 4
Mr.AR.L.Sundaresan
Senior Counsel for
Mrs.AL.Ganthimathi for R2

ORDER

The petitioner, Maha Thejo Mandala Sabha, a society registered under the Tamil Nadu Societies Registration Act (Regn.No.15/88) represented by its Secretary M.Jayaraman, has filed the present writ petition seeking a mandamus directing the respondents to hand over to the petitioner the possession and management of the affairs of Sri Pamban Kumaraguru Dasar Swamigal Samadhi with properties movable and immovable and land and buildings in acre 3.02 comprised in Paimash No.967, Survey No.172/2A, Mayurapuram, Thiruvannamiyur Village, Chennai 600 041 and to refrain from interfering with the performance of the religious and spiritual rituals by the petitioner in the 'Samadhi' of Sri Pamban Kumaraguru Dasar Swamigal.

2. Mr.R.Thiagarajan, learned Senior Counsel appearing for the petitioner forcibly pleaded that even after winning three rounds of litigation against the respondent-H.R. & C.E. Department, the petitioner-Sabha is not able to reap the hard earned fruits three times bestowed by this Court to the petitioner. Explaining further, he submitted that in the first round of litigation, when the Commissioner and the Deputy Commissioner, H.R. & C.E. Department, the respondents 4 & 3 herein decided to take over the affairs of the petitioner-Sabha from one Mr.T.T.Kuppasami Chettiar, who was in-charge of the sabha in 1971, Writ Petition No.3501 of 1971 was filed to issue a Writ of Prohibition prohibiting the respondents from acting in terms of their notice No.1003 of 1969 dated 5.11.71 seeking to interfere with the petitioner's possession of Sri Pamban Kumaragurudasa Swamigal Samadhi Koil, Thiruvannamiyur and its property. This Court, appreciating the factor that Srimath Pamban Kumara Gurudasa Swamigal (hereinafter referred to as "the Swamigal") was an inspired baktha of Lord Muruga and had contributed to the celebrated 'Shanmugha Kavasam', 'Panchamirtha Vannam', 'Kumarasthavam' and had also composed more than 6,666 compositions; that the Swamigal was a legend, Saint and a Gnani during his lifetime with a lot of followers and devotees including the most popular and familiar scholars like Thiru.Vi.Ka, Dr.Guruswamy Mudaliar and others; that before attaining Jeevan Mukthi, Swamigal left his last 'Will and Testament' in the year 1926 and 'Codicil' in the year

1927, which were also probated on the Original Side of this Court in O.P.No.87 of 1933 and that in terms of the said Will, Swamigal had appointed a sabha called 'Mahathejo Mandalam' with 21 members constituting mostly his disciples, bakthas and worshippers of Lord Subramania to perform the 'Mayura Vahana Sevanam' festival and other pooja rituals, in its order dated 4.9.73 passed in W.P.No.3501 of 1971, had held that the characteristics of a temple had to be decided in a regularly instituted action either at the instance of the petitioner therein or by the department to find out whether the subject institution comes within the jurisdiction and supervision of the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and finally, it has been also held that if substantially the Hindu public go to a 'Samadhi' for Guru Pooja, then the same is not a temple, as it has neither been consecrated in accordance with the Hindu customs and notions nor are there present the essential characteristics of a temple such as Dwajasthambam, Arthamandapam, Mahamandapam and Garbagraham. It was further held that without adverting to these essential facts, the respondents cannot assume jurisdiction under the provisions of the Act. On this basis, it has been held that the petitioner was entitled to a writ of prohibition. Accordingly, the said writ petition was allowed against the respondent-H.R. & C.E. Department.

3. Again, in view of the non-performance of the rituals in accordance with the wishes of the Swamigal shown in the Will, the second round of litigation was initiated in Writ Petition No.6157 of 1991 praying for a writ of mandamus to the Commissioner and the Deputy Commissioner of Hindu Religious and Charitable Endowments Department to entrust the performance of all the religious and spiritual rituals of the 'Samadhi' to the petitioner-Sabha. This Court, by order dated 20.6.1991, with a categorical finding that the H.R. & C.E. Department has assumed jurisdiction and spoiled the quietness of the place in which the 'Samadhi' is installed with a further finding that what were all done for the past six years by the department amounted to a highhanded action, issued a mandamus directing the respondents 1 & 2 therein to handover the administration of the institution to the petitioner-Sabha.

4. Mr.R.Thiagarajan, learned Senior Counsel argued further that the order dated 20.6.91 passed in Writ Petition No.6157 of 1991 was also challenged before the Hon'ble Division Bench in Writ Appeal No.853 of 1991. The Hon'ble Division Bench, in its order dated 18.7.91, confirmed the direction issued to the respondents 1 and 2 in the writ petition to entrust to the Maha Thejo Mandala Sabha the performance of all the religious and spiritual rituals of Sri Pamban Kumara Gurudasa Swamigal at Thiruvanmiyur in accordance with the sacred and pious wishes of the Swamigal in his last Will and Testament of 1926. So far as the management of the affairs of the 'Samadhi' and the properties attached thereto

were concerned, it was observed that they shall continue to remain with the department, who shall not in any way alter the basic character of the institution by any means till the Deputy Commissioner before whom the Application No.19 of 1989 filed under Section 63 of the Hindu Religious and Charitable Endowments Act filed by the petitioner Sabha was decided finally. Adding further, Mr.R.Thiagarajan, learned senior counsel submitted that the Hon'ble Division Bench also made it clear that the decision of the authorities under the Hindu Religious and Charitable Endowments Act shall ultimately govern the continuance or discontinuation of the directions given therein.

5. Thereafter, the Application No.19 of 1989 filed under Section 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act by the petitioner seeking to declare it as not a religious institution, was dismissed by the Deputy Commissioner by order dated 1.10.93. On the appeals preferred by the petitioner and another in A.P.Nos.2 & 3 of 1994, the Commissioner of H.R. & C.E. Department in his order dated 27.10.1994, while setting aside the order dated 1.10.93 passed by the Deputy Commissioner, held that the institution is not a public temple as defined under Section 6(20) of the Act and accordingly, allowed the appeal filed by the writ petitioner. Aggrieved thereby, the respondents filed statutory suits under Section 70 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, challenging the order dated 27.10.1994. The order dated 27.10.94 passed in A.P.Nos.2 & 3 of 1994 was again tested in O.S.Nos.9257, 9404 and 9405 of 1994 before the City Civil Court, Chennai and after an elaborate trial, the learned V Assistant Judge, City Civil Court, Chennai, by a common judgment and decree dated 30.8.2000, dismissed all the three suits, confirming the order dated 27.10.94 passed in A.P.Nos.2 & 3 of 1994 by the Commissioner of H.R. & C.E. Department in favour of the petitioner.

6. Mr.R.Thiagarajan, learned Senior Counsel pleading further, stated that the Department and one Kumarasthava Ramanujam aggrieved by the dismissal of the aforementioned civil suits preferred A.S.Nos.310, 311 of 2000 and 650 of 2001 before this Court and after hearing the parties at length, this Court also confirmed the order dated 27.10.94 passed by the Commissioner of H.R. & C.E. Department by a detailed judgment dated 21.12.2009. Again, not satisfied with the judgment passed by the City Civil Court in the suits and the judgment passed by this Court in the Appeal Suits confirming the order passed by the Commissioner dated 27.10.94, the matter was taken up to the Hon'ble Supreme Court in S.L.P.(C) Nos.9148-9149 of 2010. Although the matter was pending for a period of seven long years, as the special leave petitions were converted as Civil Appeal Nos.4178-4179 of 2013, the Hon'ble Apex Court also finally on 30.11.2017, dismissed the appeals filed by the Assistant Commissioner of H.R. & C.E. Department and another in favour of the petitioner with a

specific direction to the respondents herein to comply with the order passed by this Court. Once again, the respondents filed Review Petition (C)Nos.001585-001586 of 2018 before the Honourable Apex Court taking a plea that in view of the amendment brought into Section 6(18) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, including "Samadhi" also as religious institution, curiously withdrew their Review Petitions on 11.07.2018. Therefore, as a general rule, the order dated 04.09.1973 passed by this Court in W.P.No.3501 of 1971; order dated 20.06.1991 passed in W.P.No.6157 of 1991; judgment dated 18.07.1991 passed in W.A.No.853 of 1991; order dated 27.10.1994 passed in A.P.Nos.2 and 3 of 1994; common judgment dated 30.08.2000 passed in O.S.Nos.9257, 9404 and 9405 of 1994; common judgment dated 21.12.2009 passed in A.S.Nos.310 and 311 of 2000 and 650 of 2001, as confirmed by the order dated 30.11.2017 passed by the Honourable Apex Court in Civil Appeal Nos.4178 and 4179 of 2013 and the order dated 11.07.2018 passed in Review Petition (C)Nos.001585-001586 of 2018, have merged together and hence, the order dated 20.06.1991 passed in W.P.No.6157 of 1991 and the order dated 27.10.1994 passed in A.P.Nos.2 and 3 of 1994, as confirmed by the Honourable Apex Court in the order dated 30.11.2017 passed in Civil Appeal Nos.4178 and 4179 of 2013, by virtue of Article 141 of the Constitution of India, should be complied with, obeyed and implemented without any reservation. However, the respondents representing the Government department, instead of complying with the judgments/decrees/ orders passed by various Courts in all the three rounds of litigation, is not allowing the petitioner to enjoy the fruits of the order passed by this Court as well as the Supreme Court. Therefore, the present writ petition filed by the petitioner Sabha, on the fourth round of litigation, should be allowed as prayed for, learned Senior Counsel pleaded. Concluding his arguments, Mr.R.Thiagarajan, learned Senior Counsel pleaded that even after three rounds of litigations, the H.R. & C.E., Department cannot refuse to comply with the directions issued by the Honourable Apex Court.

7. Concluding his arguments, Mr.R.Thiagarajan, learned Senior Counsel emphatically pleaded that after filing the Review Petitions before the Honourable Apex Court raising the plea of amendment made under Section 6(18) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, including "Samadhi" to the definition of "religious institution", they withdrew the Review Petitions as there was no more issue available for adjudication. Therefore, when all the issues were decided between the same parties, the principle of res judicata prevents the respondents to indulge in judicial adjudication any more by litigating the same issue over and again. Hence, the respondents have no option or recourse except to comply with the orders as directed by the Honourable Apex Court. He further submitted that as the Honourable Apex Court has given liberty to the respondents to invoke Section 3

of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, without there being any cause of action or foundation for mismanagement, they cannot continue to manage the petitioner Sabha.

8. Mr.S.R.Rajagopal, learned Additional Advocate General appearing for the respondents 1, 3 & 4, opposing the prayer made in the writ petition seeking a direction to the respondents to hand over to the petitioner the possession and management of the affairs of Sri Pamban Kumaraguru Dasar Swamigal Samadhi with properties movable and immovable and land and buildings in acre 3.02 comprised in Paimash No.967, Survey No.172/2A, Mayurapuram, Thiruvannamiyur Village, Chennai 600 041 and to refrain from interfering with the performance of the religious and spiritual rituals by the petitioner in the 'Samadhi' of Sri Pamban Kumaraguru Dasar Swamigal, submitted that the same is ex-facie illegal, erroneous and liable to be rejected, because it is beyond the scope of the prayer made earlier. Continuing further, the learned Additional Advocate General submitted that after the dismissal of the civil suits in O.S.Nos.9257, 9404 & 9405 of 1994 and Appeal Suit Nos.310, 311 of 2000 & 650 of 2001 filed before this Court, special leave petitions were filed before the Hon'ble Apex Court. Pending the special leave petitions, law has been changed amending Section 6(18) of the Act by the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 2012 (Act No.26 of 2012, whereby the definition of 'religious institution' has been widened to include a 'Samadhi' or 'brindhavan'. Since the 'Samadhi' has been defined as a place where the mortal remains of a guru, sadhu or saint is interred and used as a piece of public religious worship, by virtue of the amendment, the 'Samadhi' also has been brought under the definition of 'religious institution', hence, Sri Pamban Gurudasa Swamigal Samadhi will come under the purview of a 'religious institution' and therefore the department is entitled to control the same. Therefore, the contention repeatedly made before this Court that the H.R. & C.E. Department cannot interfere with the administration of the 'Samadhi' is totally erroneous. Even assuming without admitting the factor that the petitioner has got any right, it is only the right to conduct the Mayuravahana Sevanam as per the Will of the Swamigal and barring this, the petitioner have no right over the administration or the properties attached to the 'Samadhi'.

9. Arguing further, the learned Additional Advocate General submitted that although the order passed in A.P.Nos.2 & 3 of 1994 dated 27.10.94 has been confirmed by the City Civil Court in O.S.Nos.9257, 9404 & 9405 of 1994 in its common judgment and decree dated 30.8.2000 and the said judgment was also confirmed by this Court in A.S.No.310, 311 of 2000 & 650 of 2001 by a judgment dated 21.12.2009, which were ultimately confirmed by the Hon'ble Apex Court by order dated 30.11.2017, no direction has been issued by the Supreme Court to handover

the administration to the petitioner Sabha. Apart from that, a review petition was also filed before the Hon'ble Apex Court. But now the said review petition has been dismissed as withdrawn with liberty to the department to seek clarification clarifying the legal effect of Section 6(18) of the Act with regard to the nature of the institution. Therefore, the present writ petition is devoid of merits.

10. Mr.AR.L.Sundaresan, learned Senior Counsel for the second respondent, restating the stand taken in the counter affidavit filed by the second respondent, contended that in all the three rounds of litigation, when the petitioner Sabha itself has taken a stand that the 'Samadhi' where Sri Pamban Kumara Gurudasa Swamigal has been interred cannot be construed as a 'religious institution' as defined under Section 6(18) or a 'temple' as defined under Section 6(20) of the Act, now the only contention advanced before all the Courts by the petitioner that the 'Samadhi' cannot be brought under the definition of 'religious institution', is no longer available to the petitioner by virtue of the subsequent amendment brought to Section 6(18) of the Act by the Tamil Nadu Act No.26 of 2012 making it clear that the 'religious institution' means and includes 'Samadhi' also. Therefore, when 'Samadhi' is also defined as a 'religious institution' under Section 6 (18), the respondents are entitled to have control over the institution. However, the petitioner has been permitted to exercise their right to conduct the Mayuravahana Sevanam as per the Will of the Swamigal. Hence, the petitioner have no other right over the administration of the 'Samadhi' or the properties of the 'Samadhi' which even now stands in the name of Kuppusamy Chettiar, who has handed over everything to the H.R. & C.E. Department.

11. The learned Senior Counsel appearing for the second respondent, taking reliance from the judgment of the Honourable Apex Court in Shakuntla Devi v. Kamla and others reported in (2005) 5 Supreme Court Cases 390, further argued that the principles of res judicata cannot be put against the Executive Officer, because the order passed by the Honourable Apex Court is without jurisdiction and hence, the same becomes a nullity. Consequently, when an order is nullity, it cannot be supported by invoking the principles like, res judicata, estoppel or waiver.

12. Going further, he has pleaded that if a suit is based on an earlier declaratory decree and such decree is contrary to law prevailing at the time of its consideration as to its legality or is a decree granted by a Court which has no jurisdiction to grant such decree, the principles of res judicata under Section 11 of the Code of Civil Procedure will not be attracted and it is open to the defendant in such suits to establish that the declaratory decree relied upon is not based on a good law.

13. Heard learned Senior Counsel for the parties.

LAW DECLARED BY THE HONOURABLE APEX COURT UNDER ARTICLE 141 OF THE CONSTITUTION OF INDIA IN THE THIRD ROUND OF LITIGATION SHALL BE BINDING ON ALL PARTIES:

14. It is not in dispute that the petitioner is facing the fourth round of litigation in respect of the issue having reached a finality, when the Hon'ble Apex Court has dismissed the Civil Appeal Nos.4178-4179 of 2013 filed by the H.R. & C.E. Department by order dated 30.11.2017 directing the judgments of the High Court as well as Civil Court to be complied with. For better clarity, let us now refer to the order passed by the Hon'ble Apex Court on 30.11.2017 in Civil Appeal Nos.4178-4179 of 2013, which reads as follows:-

"No case is made out for interference in the judgments and orders passed by the High Court as well as Civil Court. Let the judgments be complied with. The civil appeals are dismissed.

However, as prayed, the appellants are free to initiate the proceedings under Section 3 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 in accordance with law. It is open to the respondents to take all the legal pleas as and when such action is initiated. We make it clear that we have not commented on the merits of the said prayer and the liberty is given only on the basis of the submissions made by the counsel."

15. A perusal of the order shows that no case is made out for interference in the judgments and orders passed by the High Court as well as Civil Court. "Let the judgments be complied with." ordered by the Honourable Apex Court. In this context, Article 141 of the Constitution of India may be usefully referred to and the same reads as follows:-

"141. The law declared by the Supreme Court shall be binding on all Courts within the territory of India."

A careful reading of Article 141 shows that once the Hon'ble Apex Court decides any issue, such order or decision passed by the Supreme Court shall be binding on all Courts within the territory of India. No doubt, it will be also binding on the parties to the case before the Supreme Court where the judgment has already been rendered. Now, admittedly, both the petitioner and the respondents were parties to the proceedings in Civil Appeal Nos.4178-4179 of 2013 filed before the Supreme Court and the Supreme Court, while dismissing the civil appeals filed by the respondents, as highlighted above made it known that no case is made out for interference in the judgments and orders passed by the High Court as well as Civil Court, as a result it also further directed that let the

judgments be complied with. Therefore, the parties against whom the direction to comply with the judgment and order, cannot be permitted to raise any new grounds to annul the judgment passed by the Supreme Court, confirming the orders passed by the High Court and the Civil Courts on the issue raised in this writ petition.

16. As it is well settled legal position, once a direction is issued by a competent Court, it has to be obeyed and also implemented without any reservation. If an order passed by a Court of law is not complied with or is ignored, there will be an end of rule of law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. While so, it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. Useful reference can be had from the decision in Commissioner, Karnataka Housing Board v. C.Muddaiah reported in (2007) 7 Supreme Court Cases 689.

17. The Apex Court, in the judgment mentioned supra, has also ruled that the binding judicial pronouncement between the parties cannot be made ineffective or inoperative with the aid of Legislative power by making a provision which, in substance and in reality, overrides or overrules the decision rendered by a competent Court, because such process clearly renders the judicial decision ineffective by indirectly exercising appellate power over a judicial forum, which is impermissible. This proposition has been again reiterated by the Supreme Court in the latest judgment in Goa Foundation v. State of Goa reported in (2016) 6 Supreme Court Cases 602, holding, in paragraph-24, as follows:-

"24. The principles on which first question would require to be answered are not in doubt. The power to invalidate a legislative or executive act lies with the Court. A judicial pronouncement, either declaratory or conferring rights on the citizens cannot be set at naught by a subsequent legislative act for that would amount to an encroachment on the judicial powers. However, the legislature would be competent to pass an amending or a validating act, if deemed fit, with retrospective effect removing the basis of the decision of the Court. Even in such a situation the courts may not approve a retrospective deprivation of accrued rights arising from a judgment by means of a subsequent legislation [Madan Mohan Pathak v. Union of India reported in (1978) 2 SCC 50]. However, where the Court's judgment is purely declaratory, the courts will lean in support of the legislative power to remove the basis of a Court judgment even retrospectively, paving the way for a

restoration of the status quo ante. Though the consequence may appear to be an exercise to overcome the judicial pronouncement it is so only at first blush; a closer scrutiny would confer legitimacy on such an exercise as the same is a normal adjunct of the legislative power. The whole exercise is one of viewing the different spheres of jurisdiction exercised by the two bodies i.e. the judiciary and the legislature. The balancing act, delicate as it is, to the constitutional scheme is guided by well-defined values which have found succinct manifestation in the views of this Court in *Bhaktwar Trust v. M.D.Narayan* reported in [(2003) 5 SCC 298]."

18. In the present case, the direction issued by the Hon'ble Apex Court in its order dated 30.11.2017 clearly and categorically directs the H.R. & C.E. Department to comply with the judgments and orders passed by the High Court as well as the Civil Court. When the direction issued by the Apex Court in the order dated 30.11.2017 has become final, it is binding between the parties. Therefore, it has become obligatory on the part of the H.R. & C.E. Department to implement the direction issued by the Apex Court.

19. In the case on hand, in view of the order passed by the Honourable Apex Court in Civil Appeal Nos.4178-4179 of 2013, dated 30.11.2017, giving a specific direction that "Let the judgments be complied with. The civil appeals are dismissed.", the Executive Officer cannot have any option to challenge the said order as they have also withdrawn the Review Petition (C)Nos.001585-001586 of 2018, on 11.07.2018. As a result, they are bound to comply with the directions of the Court.

PRINCIPLES OF RES JUDICATA AGAINST RESPONDENTS AS BETWEEN PAST AND FUTURE LITIGATIONS:

20. In fact, the Supreme Court in *State of Gujarat v. R.A.Mehta*, (2013) 3 SCC 1, while considering the binding effect of its judgment, has held as follows:-

"61. There can be no dispute with respect to the settled legal proposition that a judgment of this Court is binding,..It is also correct to state that even if a particular issue has not been agitated earlier or a particular argument was advanced but was not considered, the said judgment does not lose its binding effect, provided that the point with reference to which an argument is subsequently advanced has actually been decided. The decision therefore, would not

lose its authority 'merely because it was badly argued, inadequately considered or fallaciously reasoned'....(Vide Somavanti v. State of Punjab, [AIR 1963 SC 151]; Ballabhdas Mathuradas Lakhani v. Municipal Committee, Malkapur, (1970) 2 SCC 267; Ambika Prasad Mishra v. State of U.P. (1980) 3 SCC 719 and Director of Settlements v. M.R.Apparao, (2002) 4 SCC 638)."

21. Secondly, after the order dated 30.11.2017 was passed in Civil Appeal Nos.4178-4179 of 2013 by the Supreme Court, the respondents have also filed a Review Petition No.58 of 2018 in Civil Appeal Nos.4178-4179 of 2013 raising the same argument that in view of the subsequent amendment brought in Section 6(18) that the 'religious institution' would cover the 'Samadhi' also, for the reasons best known to them, the said review petition has been withdrawn by the respondents, allowing the order dated 30.11.2017 giving a direction to comply with the judgments to become final and concluded. Let us also see one of the grounds taken by the respondents in the review petition filed under Article 137 of the Constitution of India, which reads as follows:-

"4. This Hon'ble Court was not pleased to consider the rejoinder filed by the appellants, wherein it clearly stated that,

"...the appellant begs to bring to notice of this Hon'ble Court that on 31.05.2012, the Government of Tamil Nadu enacted the Act 26 of 2012 namely Tamilnadu Hindu Religious and Charitable Endowments (Amendment) Act, 2012. This Act was published on 01.06.2012. The said Act is reads as under:

"....

2. In section 6 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959,---

(2) for clause (18), the following clause shall be substituted, namely:--

"(18) "religious institution" means a math, temple or specific endowment and includes,--

- (i) a samadhi or brindhavan; or
- (ii) any other institution established or maintained for a religious purpose.

Explanation.-- For the purpose of this clause-

(1) "samadhi" means a place where the mortal remains of a guru, sadhu or saint is interned (sic) and used as a place of public religious worship;

(2) "brindhavan" means a place established or maintained in memory of a guru, sadhu or saint and used as a piece of public religious worship, but does not include Samadhi;

Therefore, in view of the said Act, the subject temple is comes under the definition of term "religious institution" as defined in 18 of section 6 of the Tamilnadu Hindu Religious and Charitable Endowments (Amendment) Act, 2012. A true copy of the said Act is enclosed herewith." This was not considered by this Hon'ble Court."

22. The above grounds taken by the respondent-H.R. & C.E. Department in the review petition filed before the Hon'ble Apex Court to review the order dated 30.11.2017 was also dismissed as withdrawn by the Apex Court. When the respondents have taken a legal plea before the Apex Court in the review petition filed under Article 137 of the Constitution of India that the Apex Court has not taken into consideration the rejoinder filed by the respondents that the Government of Tamilnadu enacted the Act 26 of 2012 by including the 'Samadhi' also as a 'religious institution', they have failed to prosecute the review petition and they have given up the plea that by virtue of the amendment in section 6(18), 'religious institution' includes a 'Samadhi' also. Once the party taking a legal plea withdraws the same, again it is not open to the same party to re-agitate the same issue, as it is hit by the principles of res judicata. Therefore, the respondents, having lost their case before the Supreme Court in the Civil Appeal Nos.4178-4179 of 2013 and subsequently withdrew the review petition also, cannot be allowed to re-agitate the same issue in this writ petition. It is a well settled legal position that what cannot be done directly cannot be done indirectly. This also reminds us to the old Chancellor decision in Taylor v. Taylor, 1875 (1) Ch.D.426 followed by the Privy Council in Nazir Ahmed v. King Emperor, AIR 1936 PC 253(2) laying down vividly the law that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.

23. Moreover, the principles of res judicata would also operate against the respondents, as the respondents have already filed a detailed rejoinder in the Civil Appeal Nos.4178-4179 of 2013 before the Apex Court taking a plea that

by virtue of the amendment in Section 6(18), the 'religious institution' includes a 'Samadhi' also. When the respondents have failed to succeed on the said ground in the civil appeals and also failed to prosecute the review petition, they cannot be now permitted to re-argue the same plea that by virtue of the amendment brought in Section 6(18), the 'religious institution' includes a 'Samadhi' also. This is also against the ratio laid down by the Apex Court in Dr.Subramanian Swamy v. State of Tamil Nadu and others, (2014) 5 SCC 75, wherein it is held that once a res is judicata, it shall not be adjudged again, for the simple reason that the principle of res judicata is to give a finality to judicial decisions. It is pertinent to extract paragraphs 40 to 42 of the said judgment as follows:-

"40. Even an erroneous decision on a question of law attracts the doctrine of res judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata. (Vide Shah Shivraj Gopalji v. Edappakath Ayiassa Bi & Ors. [AIR 1949 PC 302] and Mohanlal Goenka v. Benoy Kishna Mukherjee & Ors. [AIR 1953 SC 65]).

41. In Raj Lakshmi Dasi v. Banamali Sen [AIR 1953 SC 33], this Court while dealing with the doctrine of res judicata referred to and relied upon the judgment in Sheoparsan Singh v. Ramnandan Singh [AIR 1916 PC 78], wherein it had been observed as under: (Raj Lakshmi Dasi case, AIR p.38, para 15)

"15.....the rule of res judicata, while founded on ancient precedents, is dictated by a wisdom which is for all time.... Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu commentators. Vijnanesvara and Nilakantha include the plea of a former judgment among those allowed by law, each citing for this purpose the text of Katyayana, who describes the plea thus: "If a person, though defeated at law, sue again, he should be answered, 'you were defeated formerly'. This is called the plea of former judgment.... And so the application of the rule by the courts in India should be influenced by no technical considerations of form, but by matter of substance within the

limits allowed by law. (Sheoparsan Singh case, IA pp.98-99)" (emphasis in original)

42. This Court in *Satyadhyan Ghosal. v. Deorajin Debi*, [AIR 1960 SC 941] explained the scope of principle of res-judicata observing as under: (AIR p.943, para 7)

"7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter--whether on a question of fact or a question of law--has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct."

A similar view has been reiterated by this court in *Daryao v. State of U.P.* [AIR 1961 SC 1457]; *Greater Cochin Development Authority v. Leelamma Valson*, (2002) 2 SCC 573 and *Bhanu Kumar Jain v. Archana Kumar*, (2005) 1 SCC 787."

24. The Apex Court, while explaining the scope of finality of judgment, has also ruled that one should not be made to face the same kind of litigation twice ever, because such a process would be contrary to considerations of fair play and justice. It is also pertinent to extract paragraph-44 of the judgment of the Apex Court in *Dr.Subramanian Swamy's* case, as follows:-

"44. In Hope Plantations Ltd. v. Taluk Land Board, Peermade, (1999) 5 SCC 590, this Court has explained the scope of finality of the judgment of this Court observing as under:

"17.....One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice ever, because such a process would be contrary to considerations of fair play and justice.

26.....Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it.

(See also: Burn & Co., v. Employees [AIR 1957 SC 38]; G.K.Dudani v. S.D. Sharma, [AIR 1986 SC 1455] and Ashok Kumar Srivastav v. National Insurance Co. Ltd., (1998) 4 SCC 361."

25. The above settled legal proposition clearly shows that even a different view on the interpretation of the law may be possible, the same should not be accepted in case it has the effect of unsettling transactions which had been entered into on the basis of the decisions, because reopening past and closed transactions would stand jeopardised and this would create a chaotic situation which may bring instability in the society.

DUTY OF THIS COURT UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA TO MAKE AVAILABLE THE FRUITS OF THREE ROUNDS OF LITIGATION TO THE WINNER:

26.1. In a nutshell, in the present case, the fruits of all the three rounds of litigation, in my considered opinion, should enure to the winner of the case (writ petitioner) at least in the fourth round of litigation.

26.2. In the very first order passed by this Court in W.P.NO.3501 of 1971 way back on 4.9.1973, this Court, while

allowing the writ petition, issued a writ of prohibition against the respondents not to interfere with the petitioner's possession of Sri Pamban Kumaragurudasa Swamigal Samadhi. This has become final.

26.3. In the second round of litigation, this Court in W.P.No.6157 of 1991, by order dated 20.6.1991, issued a mandamus directing the respondents Commissioner and the Deputy Commissioner of H.R. & C.E. Department to entrust the performance of all the religious and spiritual rituals of Sri Pamban Kumaragurudasa Swamigal Samadhi at Tiruvanmiyur, Chennai to the petitioner-Sabha. For better appreciation, the operative portion of the said order is extracted as follows:-

"19. In such circumstances, though the prayer asked for is entirely different, it is well settled that this court can mould the prayer to suit the occasion and as such a writ of mandamus will issue to the affairs of the 'Samadhi' etc., to the Sabha, the third respondent herein, within a month from to-day, as it was done before the respondent department took over the same. As such, I am granting the relief to the Sabha, the third respondent herein, to take over the management of the affairs of the 'Samadhi' of Pamban Swamigal. The writ petition is allowed. However, there will be no order as to costs. I do hope that the Sabha will understand the situation and act according to the pious wishes of the Swamigal as laid down in his Will and Codicil, without giving any room to anybody to contend that the Sabha is not in existence."

26.4. Obviously, being aggrieved by the mandamus issued against the respondents to handover the affairs of the 'Samadhi' to the petitioner Sabha, Writ Appeal No.853 of 1991 was filed. The Hon'ble Division Bench, by order dated 18.7.91, while upholding the direction issued by the learned single Judge to entrust the performance of all the religious and spiritual rituals of Sri Pamban Kumara Gurudasa Swamigal at Thiruvanmiyur in accordance with the sacred and pious wishes of Sri Pamban Kumara Gurudasa Swamigal to the third respondent therein/petitioner herein, however, so far as the management of the affairs of the 'Samadhi' and the properties attached thereto were concerned, observed that the same shall remain with the appellants therein/respondents herein till the matter is decided by the Deputy Commissioner before whom Application No.19 of 1989 filed by the petitioner under Section 63 of the Hindu Religious and Charitable Endowments Act by the Maha Thejo Mandala Sabha was pending disposal. However, the Deputy Commissioner, H.R. & C.E., Department, dismissed the Application No.19 of 1989 on 01.10.1993 holding that the

petitioner's institution is a temple within the meaning of the definition of 'religious institution' under Section 6(18) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

26.5. In the third round of litigation, the appeal filed by the petitioner Sabha in A.P.No.2 of 1994 under Section 69 (1) of the Hindu Religious and Charitable Endowments Act was allowed by the Commissioner by his order dated 27.10.94, setting aside the order passed by the Deputy Commissioner in Application No.19 of 1989, holding that the 'Samadhi' in question is not a 'religious institution' as defined under Section 6(18) or a 'temple' as defined under Section 6(20) of the Act.

26.6. As against the order of the Commissioner, H.R. & C.E., Department, when the H.R. & C.E., Department filed statutory suits under Section 70 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the above said order of the Commissioner was also confirmed in favour of the petitioner herein by a common judgment and decree dated 30.8.2000 passed by the learned V Assistant City Civil Judge, Chennai in O.S.Nos.9257, 9404 & 9405 of 1994.

26.7. Again as against the same, when further Appeal was filed by the respondent Department, the judgment and decree passed by the City Civil Court dated 30.08.2000 were further confirmed by this Court in A.S.Nos.310, 311 of 2000 & 650 of 2001 by the judgment and decree dated 21.12.2009.

26.8. Again the further appeals in Civil Appeal Nos.4178-4179 of 2013 were also dismissed by the Hon'ble Supreme Court by order dated 30.11.2017 in favour of the petitioner holding that no case is made out for interference in the judgments and orders passed by the High Court as well as Civil Court with a specific direction that the judgments be complied with.

26.9. This Court is also conscious of the fact that the Apex Court has given liberty to the respondents to initiate proceedings under Section 3 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 in accordance with law and it is open to the petitioner herein to take all the legal pleas as and when such action is initiated, without commenting on the merits of the said prayer. In my considered opinion, the said liberty, perhaps, may enure to the respondents only in a case where there is a mismanagement in the affairs of the 'Samadhi'. Whereas in the present case, till date, there is no enquiry conducted after issuing notice to the petitioner-Sabha as to the nature of irregularities or mismanagement warranting taking over of the 'Samadhi'. Therefore, in the absence of any action taken under Section 3 of the Act, the respondents cannot refuse to handover the possession and management of the affairs of the 'Samadhi' to the petitioner Sabha, as directed by the Supreme Court.

27. The sole contention made by Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for the second respondent that the principle of res judicata cannot be applied to the second respondent, since the order obtained by the petitioner is contrary to the amendment amending Section 6(18) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, defining 'religious institution' which includes Samadhi or brindhavan, is to be rejected, as it has no merit or force. During the pendency of the Civil Appeals before the Honourable Apex Court, the State of Tamil Nadu has brought an amendment to Section 6(18) of the Act, widening the definition to 'religious institution' including Samadhi. The amendment was substituted by the Tamil Nadu Act 26 of 2012, which came into force on 27.06.2012. Aggrieved by the judgment and decree passed by this Court in A.S.Nos.310 and 311 of 2000 and 650 of 2001, dated 21.12.2009, the Special Leave Petition Nos.9148-9149 of 2010 were filed. All the Special Leave Petitions were listed on 19.04.2010. Subsequently, the said Special Leave Petitions were numbered as Civil Appeal Nos.4178-4179 of 2013 and all the Civil Appeals were dismissed on 30.11.2017 giving a finding that "No case is made out for interference in the judgments and orders passed by the High Court as well as Civil Court. Let the judgments be complied with. The civil appeals are dismissed."

28. When the aforesaid Civil Appeals were pending for about seven long years in the Honourable Apex Court, the respondents have filed a detailed rejoinder affidavit dated 30.10.2017, bringing to the notice of the Honourable Apex Court that Section 6(18) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, was amended widening the meaning of 'religious institution' to the place of Samadhi also. It was adjudicated before the Honourable Apex Court that as the Hindu Religious and Charitable Endowments Department is entitled to take over any temple or religious institution including Samadhi provided there is a proven mismanagement, for unless the Government have reason to believe that such temple or Samadhi is being mismanaged by conducting an enquiry after issuing notice of charges on mismanagement, they cannot take over any such temple or religious institution including Samadhi by exercising the powers under Section 3 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. This mandatory exercise has not been done so far. Therefore, the continuous management of the petitioner institution is without jurisdiction. This Court in the second round of litigation, in its order dated 20.06.1991 passed in W.P.No.6157 of 1991, while setting aside the taking over of the affairs of the petitioner Sabha from T.T.Kuppusamy Chetty, directed the petitioner Sabha to take over the affairs of the management. Although this order was challenged in W.A.No.853 of 1991, in view of the order passed by the Commissioner, H.R & C.E., Department, in A.P.Nos.2 and 3 of 1994, dated 27.10.1994, the order dated 20.06.1991 passed in W.P.No.6157 of 1991 became final and if the respondents intend to take over the affairs

of the petitioner Sabha again, they should issue a fresh notice under Section 3 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and conduct an enquiry and proceed further only on the proven mismanagement, which has not been complied with till now. Therefore, the Honourable Apex Court in the order dated 30.11.2017, passed in Civil Appeal Nos.4178-4179 of 2013, gave liberty to the respondents to initiate proceedings under Section 3 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

29. Also, the Honourable Apex Court in the famous case in Subramanian Swamy v. State of Tamil Nadu reported in (2014) 5 Supreme Court Cases 75, categorically held that "Even if the management of a temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied. Continuation thereafter would tantamount to usurpation of their proprietary rights or violation of the fundamental rights guaranteed by the Constitution in favour of the persons deprived. Therefore, taking over of the management in such circumstances must be for a limited period.".

30. Besides, it is pertinent to extract the paragraphs 65 to 67 of the aforesaid decision as under:

"65. Even if the management of a temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied. Continuation thereafter would tantamount to usurpation of their proprietary rights or violation of the fundamental rights guaranteed by the Constitution in favour of the persons deprived. Therefore, taking over of the management in such circumstances must be for a limited period. Thus, such expropriatory order requires to be considered strictly as it infringes the fundamental rights of the citizens and would amount to divesting them of their legitimate rights to manage and administer the temple for an indefinite period. We are of the view that the impugned order is liable to be set aside for failure to prescribe the duration for which it will be in force.

66. Supersession of rights of administration cannot be of a permanent enduring nature. Its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of maladministration. The reason is that the objective to take over the management and administration is not the removal and replacement of the existing administration but to rectify and stump out the consequences of maladministration. Power to regulate does not mean power to supersede the administration for indefinite period.

67. "Regulate" is defined as to direct; to direct by rule or restriction; to direct or manage according to the certain standards, to restrain or restrict. The word "regulate" is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning and may be very comprehensive in scope. Thus, it may mean to control or to subject to governing principles. Regulate has different set of meanings and must take its colour from the context in which it is used having regard to the purpose and object of the legislation. The word 'regulate' is elastic enough to include issuance of directions etc. (Vide: K. Ramanathan v. State of Tamil Nadu reported in (1985) 2 SCC 116; and Balmer Lawrie & Company Limited & Ors. Partha Sarathi Sen Roy reported in (2013) 8 SCC 345)".

31. Thus, the above principles and observations of the Honourable Apex Court would clearly show that supersession of rights of administration cannot be a permanent one and such supersession/taking over of the administration of the temple has to be reasonably fixed so as to be co-terminus with the removal of the consequences of maladministration. The purpose of taking over the management is to rectify and stamp out the consequences of maladministration and the power to regulate does not mean power to supersede the administration for indefinite period. Therefore, in my considered view, the respondents strictly obeying the direction of the Honourable Apex Court, dated 30.11.2017, shall hand over the management of the petitioner's religious institution forthwith.

NO ENQUIRY WHATSOEVER HELD UNDER SECTION 3 OF THE TAMIL NADU HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS ACT, 1959:

32. When the respondents have specifically prayed the Honourable Apex Court to initiate proceedings under Section 3 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and in accordance with law, without making out a case under Section 3 of the Act by issuing a show cause notice indicating the nature and extent of mismanagement, followed by an enquiry to be made by any Officer authorised by the competent authority into the affairs of the petitioner Sabha and again before being satisfied that the petitioner Sabha is being mismanaged, it is not legally permissible to arbitrarily exercise the powers under Section 3 of the Act to take over the management.

33. Although the respondents were given liberty to initiate the proceedings under Section 3 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, till date, not even any show cause notice has been issued pointing out the irregularities, lapses, etc. Moreover, the respondents

have not produced any show cause notice issued to the petitioner either before this Court or before the Honourable Apex Court indicating the improper management or one not in conformity with the law and the interests of the religious institution. Therefore, the respondents are not legally permissible to take over and administer the affairs of the petitioner Sabha which is opposed to the object and purpose of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and hence, they cannot refuse to hand over the administration as directed by the Honourable Apex Court. Consequently, the respondents are directed to hand over the administration forthwith to the petitioner as their continuous administration would run contra to the judgment of the Honourable Apex Court reported in (2014) 5 Supreme Court Cases 75 (cited supra).

34. For all the aforementioned reasons, being bound by the order of the Honourable Apex Court, the writ petition stands allowed as prayed for. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

ss/rsb

To

1. The Assistant Commissioner
H.R. & C.E. Department/Fit Person
Sri Mayuranatha Swami Temple
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2. The Executive Officer
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3. The Deputy Commissioner
H.R. & C.E. Department
Chennai 600 034, Tamil Nadu
4. The Commissioner
H.R. & C.E. Department
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- + 1 cc to Mr. Government Pleader Sr.64286
+ 1 cc to Mr.A.L.Gandhimathi, Advocate Sr.63926
+ 1 cc to Mr.T.M. Hariharan, Advocate Sr.63880

W.P.No.14205 of 2018

(Cs-IX)

EU(18/09/2018)