BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.[MD]No.591 of 2022

Arumuga Nainar Saiva Marabinar
Magamai Pothu Sangam,
Represented through its Secretary,
K.Murugan,
Son of P.KalyaniPillai,
Door No.58, Muthuramalingam Street,
Sankarankovil,
Tenkasi District - 527 756. ... Petitioner

Vs.

1.The Commissioner,
The Hindu Religious and
Charitable Endowments Department,
Uthamar Gandhi Road,
Chennai - 600 034.

2.The Assistant Commissioner,
The Hindu Religious and Charitable
Endowments Department,
Thoothukudi.

3.The Joint Commissioner,
The Hindu Religious and Charitable
Endowments Department,
Sankarankovil.

4.The Executive Officer,
Arulmigu Sankaranarayana Swamy Thirukovil,
Sankarankovil,
Tenkasi District. ... Respondents

[R4 is suo motu impleaded vide order dated 31.01.2022]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, forbearing the respondents from interfering in the Kumbabishekam works in Athiyadi Vinayagar Temple located at Sankarankovil, Tenkasi District being conducted by the petitioner Sangam.

For Petitioner : Mr.G.Karthik
For Respondents 1 to 3 : Mr.A.Baskaran
Additional Government Pleader
For Respondent No.4 : Mr.VR.Shanmuganathan

O R D E R

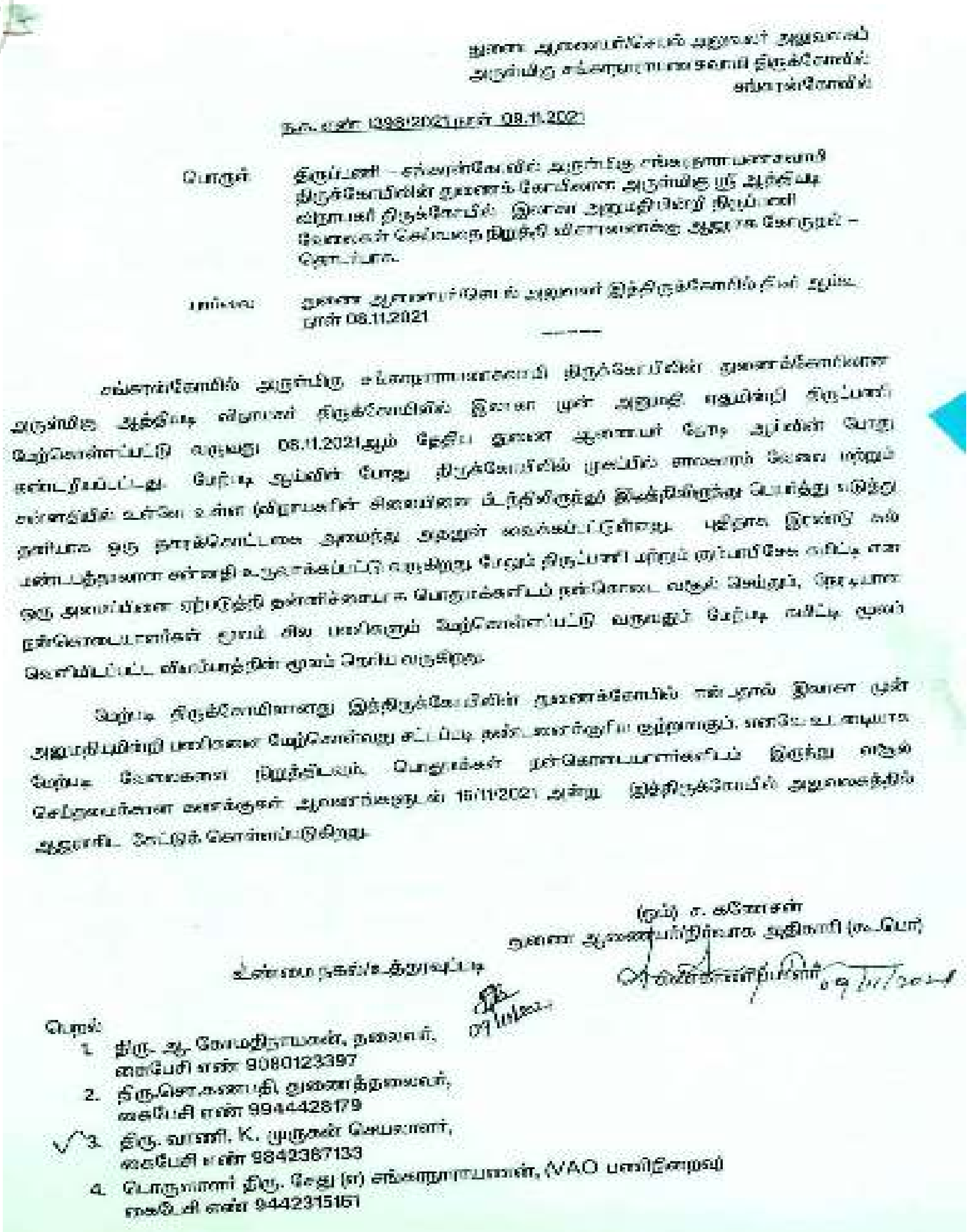
The captioned main writ petition was first listed in the admission board on 19.01.2022 and the proceedings made on that day reads as follows:

> *'When the matter was taken up the question as to the legal character of the writ petitioner came up for consideration.*
>
> ***2.****Mr.G.Karthik, learned Counsel for writ petitioner requested time to get instructions on this and revert to this Court. Request acceded to.*
>
> ***3.****List in the admission board ie., motion list after a week. List on* ***27.01.2022.'***

2.Pursuant to the aforementioned proceedings, Mr.G.Karthik, learned Counsel on record for writ petitioner today submitted that he has since obtained instructions and the writ petitioner is an unregistered entity is his say. In other words in terms of legal character, it can at best be an unincorporated Association of Persons [hereinafter 'AoP' for the sake of brevity, convenience and clarity].

3.Be that as it may, Mr.VR.Shanmuganathan, learned Counsel who has joined this virtual Court submits that he has instructions to represent the Executive Officer of Arulmigu Sankaranarayana Swamy Thirukovil, Sankarankovil Taluk, Tenkasi District [hereinafter 'main temple' for the sake of convenience and clarity] and the temple that we are concerned with in the captioned writ petition ie., Shri Athiyadi Vinayagar Temple is a sub-temple of main temple. Shri Athiyadi Vinayagar Temple in Sankarankovil Taluk, Tenkasi District shall hereinafter be referred to as 'said temple' for the sake of convenience and clarity.

4.This Court finds it appropriate to *suo motu* implead the Executive Officer of main temple as fourth respondent and the reason is a notice dated 09.11.2021 issued by the Executive Officer of main temple [as placed before this Court as part of the case file by the writ petitioner itself at page No.26 of the typed set of papers] which is as follows:



5.Mr.A.Baskaran, learned Additional Government Pleader accepts notice on behalf of respondents 1 to 3.

6.Mr.F.X.Eugene, learned Counsel who has joined this virtual Court submits that he has filed an implead petition today in the captioned matter and he says that he represents the Sivagiri Zamin which is now under Court of Wards Tirunelveli and learned Counsel disputes the rights of the writ petitioner.

7.The prayer in the captioned main writ petition is for a Mandamus *qua* the respondents and the Mandamus is to forbear the respondents from interfering in Kumbabishegam works in said temple.

This Court is now informed that the Kumbabishegam is scheduled to be held on 06.02.2022.

8.Owing to the short point involved, with the consent of learned Counsel for writ petitioner, learned State Counsel for respondents 1 to 3 and learned private Counsel for fourth respondent, main writ petition is taken up and heard out.

9.This Court after hearing all the Counsel concerned analyzed the issue in the light of the case file before it. On such analysis this Court comes to the conclusion that the prayer in captioned writ petition cannot be acceded to and the reasons ie., dispositive reasoning [together with discussion] are as follows:

9.1. The writ petition has been filed by making an averment that said temple is a private temple. This is articulated in paragraph No.2 of writ affidavit and the same reads as follows:

> *'2. I humbly submit that the temple namely 'Arulmigu Athiyadi Vinayagar temple' and the properties in relation to the temple originally belonged to Sivagiri Jameen namely Varagunaramapandiya Chinnathambiar and his son Sivigiri Raja @ <u>Senthatti Kaalaipandiya Chinnathambiar which is a 'private temple'.</u> The said temple was purchased on 09.03.1959 for proper consideration by the petitioner sangam through its then President Chidambara Mudaliar vide registered sale deed.'*

[Underlining made by this Court to supply emphasis and for ease of reference]

9.2. There is no shred of document before this Court to demonstrate that said temple is a private temple.

9.3. As a continuation of the previous point a decree dated 20.01.1992 made in O.S.No.288 of 1991 on the file of the Sub-Court, Tenkasi alone is before this Court but that has absolutely nothing to do with demonstrating that said temple is a private temple. Excerpted portions of the decree as at pages 6 and 7 of the typed set of papers is as follows:

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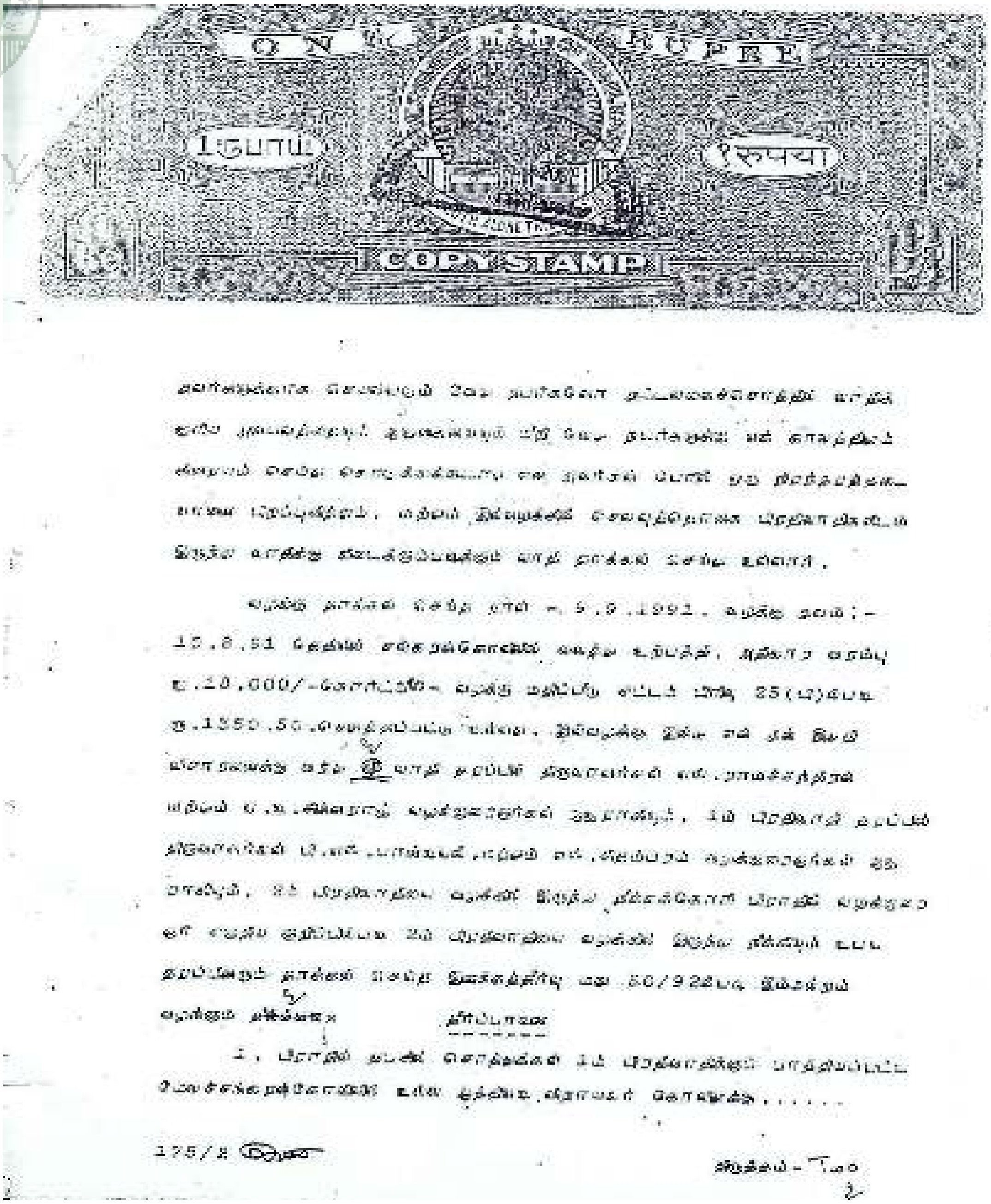

9.4. It is clear from the above excerpted portions of decree that writ petitioner has not even made the 'Tamil Nadu Hindu Religious and Charitable Endowments Department' [hereinafter 'TN HR & CE Dept.,' for the sake of convenience and clarity] as a party to the suit. The suit therefore has no bearing whatsoever on the plea of the writ petitioner that said temple is a private temple. In any event, as is evident from the prayer the *lis* is in a completely different realm between private parties and has nothing to do with declaration of said temple as a private temple. Therefore there is nothing to demonstrate that said temple is a private temple.

9.5. On the contrary learned State Counsel and learned private Counsel for main temple assert that said temple is a sub-temple of main temple. This by itself draws the curtains on the matter but this Court deems it appropriate to set out dispositive reasoning *qua* other points also.

9.6. This takes us to the Scheme of the Act viz., 'the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' {hereinafter 'TN HR & CE Act' for the sake of brevity}.

9.7. Under TN HR & CE Act, which received the ascent of the President on 19.11.1959 and was published in the official Gazette on 02.12.1959, section 1(3) is of relevance and the same reads as follows:

> *''**1(3).** It applies to all Hindu public religious institutions and endowments including the incorporated Dewaswoms and Unincorporated Dewaswoms.*
>
> ***Explanation -*** *In this sub-section, Hindu public religious institutions and endowments do not include Jain religious institutions and endowments.'*

9.8. Section 1(3) takes us to the definition of 'religious institution' under Section 6(18) and definition of 'temple' under Section 6(20) which read as follows:

> *'**6(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 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 place of public religious worship, but does not include the samadhi;)*
>
> *.....*
>
> ***6(20). "temple"****means a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or of any section thereof, as a place of public religious worship;*
>
> ***Explanation. -*** *Where a temple situated outside the State has properties situated within the State,*

control shall be exercised over the temple in accordance with the provisions of this Act, in so far as the properties of the temple situated within the State are concerned;'

[Extracted and reproduced as such]

9.9. Section 4 of said Act is also relevant and the same is as follows:

> ***'4.Exemptions.-*** *The Government may, by notification exempt whether prospectively or retrospectively from the operation of any of the provisions of this Act or of any rules made thereunder any religious institution or religious or charitable endowment or vary or cancel any such exemption:*
>
> *Provided that before such exemption is varied or cancelled, the person affected shall be given a reasonable opportunity of showing cause against such variation or cancellation.'*

[Extracted and reproduced as such]

9.10.A careful perusal of the above make it clear that on and from the appointed date *qua* TN HR & CE Act, every religious institution [temple] becomes a public temple and the exceptions are an exemption under Section 4 of the TN HR & CE Act or a declaration by a competent Civil Court.

9.11. Absent Civil Court decree and absent exemption from the Government under Section 4 of TN HR & CE Act, every religious institution ie., a temple becomes a public temple. If it is a public temple the TN HR & CE Act operates and the TN HR & CE Dept., shall be in administration of said temple. As repeatedly held by this Court TN HR & CE Act is a self contained code self contained code. There is a long line of authorities i.e., catena of case laws where this Court has taken a clear categoric, unambiguous view that TN HR & CE Act is a self contained Code and an illustrative but not exhaustive list of this line of case laws is as follows:

> *(i) In R.Lakshmi Narasimha Bhattar v. The Commissioner, HR&CE case, reported in 2011 SCC On Line Mad 2474, while inter-alia dealing with a honour (during 'Viswaroopa Dharsanam' in Arulmigu Aranganatha Swamy Thirukovil Srirangam, Trichy) and while referring to earlier orders vide Chapter V inquiry proceedings after holding that remedy is by way of statutory revision under Section 21, a learned Single Judge held that*

TNHR&CE Act is a self contained code. Most relevant portions are contained in paragraphs 25 and 27 and the same read as follows:

<u>Relevant portion in paragraph 25</u>:

'...Ultimately, if at all the petitioner's grievance to establish an honour attached to his office if any held it can be gone into only by instituting a proceedings under Section 63(e) of the TN HR&CE Act followed by a suit under Section 70(1) and a further appeal to this court under section 70(2) of the Act. Merely accusing the Joint Commissioner cum Executive Officer as biased or contending that the remedy by way of revision need not be availed since the Joint Commissioner cum Executive Officer has no jurisdiction to pass orders cannot be countenanced by this court.

<u>Paragraph 27:</u>

27. In fact the petitioner's hereditary right to receive honour is seriously under challenge by the temple management by relying upon the Tamil Nadu Act 2/1971 and also the allegation was that Rengesa Prohida service is done only by temple servants and hereditary succession over such Kaingaryams is not recognised under law. The so-called custom pleaded was also broken many times and reading of Panchangam was done by other families. All the more reasons, the petitioner has to only approach the authority under the Act and cannot bypass the Act. <u>The Act is the self contained code</u>. Only after exhausting all the remedies, a statutory appeal to this court is available over the action of the authorities. Under these circumstances, W.P.(MD) Nos. 9202 and 9263 of 2011 are also liable to be rejected.'

(Underlining made by this Court for ease of reference)

As there are long line of authorities as alluded to supra for the proposition that TN HR&CE Act is a self contained Code, this Court deems it appropriate to give a list of case laws alone in order to avoid this order becoming verbose, which is as follows:

(i)order dated 21.06.2016 in W.P(MD) No.10840 of 2016 vide V.Subramanian v. The Joint

Commissioner, HR&CE Department case [Paragraph 7];

(ii)Palanichamy v. The Commissioner, HR&CE Department case, reported in 2016 SCC OnLine Mad 21977 [Paragraph 30];

(iii)M/s.Temple Worshippers Society v. Government of Tamil Nadu reported in 2017 SCC OnLine Mad 7178 [Paragraph 5(i)];

(iv)order dated 09.11.2021 in W.P.(MD)No.20109 of 2021 vide R.S.Mani v. The Joint Commissioner [Paragraph 11]; (v)order dated 26.04.2019 made in W.P(MD) No.10392 of 2019 reported in 2019 SCC OnLine Mad 10975 (C.Rajamohan Vs. Commissioner and another) [Paragraph 2].

9.12. In the light of the aforementioned obtaining position, it is very clear that the writ petitioner which is admittedly not even a registered entity has no semblance of right *qua* said temple much less a right within the legal perimeter of TN HR & CE Act.

9.13. To seek a Mandamus it is necessary that the writ petitioner should be able to demonstrate that the writ petitioner has a legal right. This is the principle laid down in ***Praga Tools*** case [***Praga Tools Corporation Vs. Imanual and others*** reported in ***AIR 1969 SC 1306***]. It may not be necessary to go as far as ***Praga Tools*** principle as the writ petitioner should be able to demonstrate rights within the legal perimeter of TN HR & CE Act. Absent any right and absent any document to support the basis of writ petition ie., that said temple is a private temple, the writ petitioner has no rights *qua* the prayer in the captioned writ petition.

9.14. In TN HR & CE Act, the expression 'person having interest' has been defined vide Section 6(15) and the same reads as follows:

*''**6(15)** "person having interest" means -*

(a) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs;

(b) in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts thereat;

> *(c) in the case of a specific endowment, a person who is entitled to attend at or is in the habit of attending the performance of the service or charity, or who is entitled to partake or is in the habit of partaking in the benefit of the charity;*
>
> *(d) in case of samadhi, brindhavan or any other institution established or maintained for a religious purpose, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in such religious institution, or who is entitled to partake or in the habit of partaking in the benefit of the distribution of gifts thereat;'*

[Extracted and reproduced as such]

9.15.A careful perusal of the writ affidavit brings to light that there is no averment in writ affidavit which demonstrates that the writ petitioner qualifies as a person having interest. To be noted, this is on a demurrer as the writ petitioner is admittedly a mere unincorporated AoP and therefore this is a case where Section 6(15) can not even be applied. It is also on a demurrer *qua* said temple being public temple (not private temple as contended) and writ petitioner having no right whatsoever

9.16. Assuming there is a custom that also has to be established under Section 63 of TN HR & CE Act and there is nothing in this regard before this Court.

9.17. The most important and lethal (lethal *qua* writ petitioner) aspect of the matter is that the writ petitioner has annexed the aforementioned notice dated 09.11.2021 issued by the Executive Officer of the said temple [scanned and reproduced supra] in the typed set of papers but the writ petitioner has not even chosen to challenge the aforementioned notice.

9.18. The writ petitioner has filed the captioned writ petition in this Court on 10.01.2022 almost two months after the aforementioned notice. The writ petitioner by its own volition has placed the notice as part of the case file at page No.26 of the typed set of papers. Therefore, the writ petitioner's attempt now is clearly a eleventh hour exercise nay 59th minute of eleventh hour exercise.

10. Ergo, captioned writ petition fails and the same is dismissed. Therefore, there shall be no order as to costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MR

NOTE: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To

1.The Commissioner,
The Hindu Religious and
Charitable Endowments Department,
Uthamar Gandhi Road, Chennai - 600 034.

2.The Assistant Commissioner,
The Hindu Religious and Charitable
Endowments Department,
Thoothukudi.

3.The Joint Commissioner,
The Hindu Religious and Charitable
Endowments Department, Sankarankovil.

4.The Executive Officer,
Arulmigu Sankaranarayana Swamy Thirukovil,
Sankarankovil,
Tenkasi District.

+1 CC to M/s.N.GANAGASAPAPATHY, Advocate (SR-3402[F] dated 01/02/2022)

W.P.[MD]No.591 of 2022
31.01.2022

PK(CO)
KB(15.02.2022) 12P 6C