



W.P.No.16126 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.P.No.16126 of 2024

Tmt.A.Kavitha

... Petitioner

Vs.

1. The District Collector
Kancheepuram
Kancheepuram District
2. The Joint Commissioner
Hindu religious and Charitable Endowments
Kancheepuram District Office Campus
Kancheepuram District
3. The Tahsildar
Kuntrathur Taluk Office
Kuntrathur
Kancheepuram District
4. Thiru.Padmanaban
President
Methaleeshwarar Alayam
Sri Kubera Alaya Arakkattalai

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Metha Nagar
Kunrathur
Chennai – 600 069

5. The Commissioner

Hindu religious and Charitable Endowments
Kancheepuram District

... Respondents

(R5 suo motu impleaded vide this order)

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to take appropriate coercive steps to remove the encroachment lock stock and borrel in Survey No.105, Government Poramboke 0.04.0 Hectares, occupied by the fourth respondent Padmanaban, President Mathaleeswarar Temple, Sri Kubera Alaya Arakkattalai Metha Nagar, Kundrathur, Chennai – 600 069.

For Petitioners : Mr.R.Sankarasubbu

For Respondents : Mr..C.Selvaraj
Addl. Govt. Pleader for R1 & R3

Mr.N.R.R.Arun Natarajan
Special Govt. Pleader for R2 & R5

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

Captioned writ petition pertains to alleged encroachment in 'Government Poramboke (அரசு புறம்போக்கு) land admeasuring 0.04.0 Hectares, comprised in S.No.105 in Kundrathur “A” village, Kancheepuram District'



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[hereinafter 'said land' for the sake of convenience].

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2. Mr.R.Sankarasubbu, learned counsel for writ petitioner before us submits that the complaint is, said land has been encroached upon by constructing what is described as 'தீயான மண்டபம் / மடப்பள்ளி' [Mediation Hall/Dining Hall / Kitchen] {hereinafter 'said encroachment' for the sake of convenience} said to be part of a temple which goes by the name 'Methaleeshwarar Temple' [hereinafter 'said temple' for the sake of convenience and clarity].

3. It is the case of the writ petitioner that R4 (private respondent) has caused the encroachment. As regards temples, though R4 has been described as 'President' of said temple, this Court has made it clear that all temples are public temples qua sub-section (3) of Section 1 of '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} unless there is an exemption under Section 4 or a declaration that it is a private temple. This principle was *inter alia* laid down in *N.Lakshmanan's* case being order dated 11.10.2022 in W.P(MD)No.461 of 2022. Relevant paragraph is paragraph 9 and the same reads as follows:



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'9. Before writing the concluding paragraph, this Court deems it appropriate to summarize the obtaining legal position and the same is as follows:

(i) TN HR&CE Act received the assent of the President on 19.11.1959 and it was published in the Government Gazette on 02.12.1959;

(ii) On and from the aforementioned appointed date, all religious institutions [Section 6(18) of TN HR&CE Act] and all temples [Section 6(20) of TN HR&CE Act] per se, i.e., by operation of the statute (Section 1(3) of TN HR&CE Act) stand governed by TN HR&CE Act, the sequitur is, the administration and management of all temples vest in TN HR&CE Dept., Government of Tamil Nadu by operation of statute;

(iii) There is no concept of making a notification and bringing religious institution or temple under TN HR&CE statute;

(iv) On the contrary, there is provision for the Government (Section 4 of TN HR&CE Act) to exempt a religious institution / temple from some or all provisions of TN HR&CE Act;

(v) Therefore, a temple or religious institution should take the section 4 route to come outside the legal perimeter of TN HR&CE statute in entirety or one



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or some of its provision/s and the power to do is vested in the Government;

(vi) Another legal route available for a religious institution / temple is to seek a declaration that it is a private temple in the jurisdictional civil court. If a decree is passed, that will exempt such religious institution / temple from operation of TN HR&CE statute;

(vii) Absent aforementioned exemption/ declaration, every temple in the State of Tamil Nadu stands governed by TN HR&CE Act and the administration/ management vests in TN HR&CE Dept., Government of Tamil Nadu as alluded to supra and there is no concept of separate notification to bring a religious institution / temple within the legal perimeter of TN HR&CE Act as alluded to supra;

(viii) The sequitur to the above is, if any individual or group of individuals stake a claim to be in administration/ management of a religious institution/temple, they should do so by perambulating within the legal perimeter of TN HR&CE Act;

(ix) For an illustration, it may be by way of section 63(b) route (hereditary trustee) or section 64(1) legal route (scheme). These are only illustrations and



are not exhaustive;

(x)As a continuation of the above position, as already alluded to supra elsewhere in this order, this court has repeatedly held that TN HR&CE Act is a self contained code. A further extension of this legal position is, with regard to aforementioned illustrations, for a person / persons to stake a claim, there is a dedicated Chapter under TN HR&CE Act, namely Chapter V captioned 'INQUIRIES'. This Chapter provides for various means by which a person or persons can stake his/her/their claim to be in administration/ management of a temple. However, this legal route under TN HR&CE Act is not limited to Chapter V proceedings. Be that as it may, Chapter V proceedings provides for a self contained quasi judicial adjudication machinery where there are clearly drawn out tiers / hierarchy for quasi judicial adjudication;

(xi)For an illustration, a section 63(b) [hereditary trustee] application in tier 1 is heard by Joint Commissioner of TN HR&CE Dept., tier 2 statutory appeal under section 69(1) lies to the Commissioner, TN HR&CE Dept, tier 3 is, as against the order of the Commissioner, there is a statutory suit in the jurisdictional civil court under section 70 and



there is a fourth tier by way of a further appeal to this court (High Court) under section 70(2). Needless to add that a decision of this court under section 70(2) can always be carried to Hon'ble Supreme Court under Article 136 of the Constitution of India;

(xii)Reverting to the administration/management vesting in TN HR&CE Dept., the appointment of a trustee should also be done within the legal perimeter of TN HR&CE Act, as besides hereditary trustee (alluded to supra), scheme, etc., there is provision for constitution of Board of Trustees (non hereditary trustees too) and election of one amongst them as Chairman of Board of Trustees;

(xiii)If there is any delay or gap in the aforementioned procedure, i.e., constitution of Trust Board or appointment of hereditary trustee / non hereditary trustee, scheme appointment or when the appointed hereditary trustee is suspended, as a transitory / temporary measure, a Fit Person (தக்கார்) can be appointed. Provisions in this regard are contained inter-alia in sections 47, 49 and 53(4) of TN HR&CE Act;

(xiv)In addition to the above, there is a provision for appointment of Executive Officer under section 45



of TN HR&CE Act. Interestingly, the term 'Fit Person' is not defined, but terms 'Executive Officer' and 'Trustee' are defined vide Section 6(9) and Section 6(22) respectively of TN HR&CE Act which reads as follows:

'Section 6(9):

(9) "executive officer" means a person who is appointed to exercise such powers and discharge such duties appertaining to the administration of a religious institution as are assigned to him by or under this Act or the rules made thereunder or by any scheme settled or deemed to have been settled under this Act;

'Section 6(22):

(22) "trustee" means any person or body by whatever designation known in whom or in which the administration of a religious institution is vested and includes any person or body who or which is liable as if such person or body were a trustee;'

(xv) Therefore, it is clear that Fit Person (தக்கார்) is also a trustee;

(xvi) In the light of the above, appointment of a Fit Person (தக்கார்) being purely as transitory / temporary measure qua a religious institution / temple which is clearly under the sweep and rigor of TN HR&CE Act and consequently under administration / management of TN HR&CE Dept., Government of Tamil Nadu, there is no question of putting an individual on notice until such individual establishes his right under the statute through a legal drill, i.e., getting himself appointed as hereditary trustee, non hereditary trustee or getting appointed under the scheme,



etc.,;

(xvii) *TN HR&CE Act is a self contained code, it is so devised that there is no vacuum in administration / management of public temples and aforementioned Fit Person (தக்கார்) appointment provision is one such temporary/transitory measure. To be noted, this Court has repeatedly held that TNHR&CE Act is a self contained code, Sections 108, 109 which bar civil suits in respect of administration or management of religious institutions and excludes Limitation Act (respectively) buttress, bolster this obtaining proposition. Sections 108, 109 read with Section 1(3) puts the obtaining legal position that all temples per se come under TNHR&CE Act and consequently under administration and management of TNHR&CE Dept. beyond the arena of any disputation. To be noted, in a long line of authorities i.e., catena of case laws this Court has taken a clear categoric and unambiguous view that TNHR&CE Act is a self contained and an illustrative not exhaustive list of this line of case laws is as follows:*

(a) In R.Lakshmi Narasimha Bhattar v. The Commissioner, HR&CE case, reported in 2011 SCC OnLine Mad 2474, while inter-alia dealing with a honour (during 'Viswaroopa Dharsanam' in Arulmigu Aranganatha Swamy Thirukovil Srirangam, Trichy) and while referring to earlier



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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:

Relevant portion in paragraph 25:

'...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.

Paragraph 27:

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. The Act is the self contained code. 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)



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for ease of reference)

(b) In order dated 21.06.2016 in W.P(MD) No.10840 of 2016 vide V.Subramanian v. The Joint Commissioner, HR&CE Department case, another Hon'ble Single Judge of this Court while dealing with challenge to proceedings under Section 78 of TNHR&CE Act and while negating the challenge to an order under Section 78 of TNHR&CE Act (treating the writ petitioner as an encroacher) held that TNHR&CE Act is a self contained code. This is articulated in paragraph 7 of this V.Subramanian's order and the relevant portion in paragraph 7 reads as follows:

'7.It is to be noted that the above said Act is a self-contained and in-built 'Act'. It has also gives right to the aggrieved to move before the appropriate forum under the 'Act'. As such, this Court is of the considered view that the Petitioner can very well seek appropriate remedy as against the impugned order, dated 16.03.2016 of the First Respondent and the consequential order, dated 06.06.2016 of the second Respondent, under the Tamil Nadu Hindu Religious and Charitable Endowments Act,1959.'

(c) In Palanichamy v. The Commissioner, HR&CE Department case, reported in 2016 SCC Online Mad 21977, the same Hon'ble Single Judge



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who authored V.Subramanian's case, while dealing with a challenge to an order/proceedings under Section 78 of TNHR&CE Act qua removal of encroachment reiterated the aforementioned paragraph 7 of V.Subramaniam's case. This is in paragraph 30 of Palanichamy's case and the relevant portion reads as follows:

'30. At this stage, on behalf of Respondent Nos. 1 to 3, it is brought to the Notice of this Court that on 21.06.2016, in W.P.(MD) No. 10840 of 2016 between V. Subramanian v. Joint Commissioner, Hindu Religious and Charitable Endowments Department, Theni, Dindigul and Madurai Administration, Madurai, this Court, at paragraph 7, had observed the following:—

"7. It is to be noted that the above said Act is a self-contained and in-built 'Act'. It has also gives right to the aggrieved to move before the appropriate forum under the 'Act'. As such, this Court is of the considered view that the Petitioner can very well seek appropriate remedy as against the impugned order, dated 16.03.2016 of the First Respondent and the consequential order, dated 06.06.2016 of the second Respondent, under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.'

(d) In M/s.Temple Worshippers Society v. Government of Tamil Nadu case, some provisions of one set of Rules which go by the name 'Conditions for Appointment of Executive Officer Rules, 2015' ('said Rules' for brevity and



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convenience) were assailed. This challenge was negated by a Hon'ble Division Bench presided by Hon'ble Justice Sanjay Kishan Kaul as Chief Justice of this Court (as His Lordship then was) vide order dated 31.01.2017 reported in 2017 SCC Online Mad 7178. I was party to the Bench and I had penned the order for the Hon'ble Division Bench. To be noted, one of the primary grounds of challenge to some provisions of said Rules which is a piece of subordinate legislation made by the Government under Section 116 of TNHR&CE Act. To be noted, Section 116 of TNHR&CE Act is a rule making power. Some provisions of said Rules do not conform to the statute under which it has been made and it exceeds the limits of authority conferred by the enabling statute is one of the main grounds on which the challenge was predicated. In negating this challenge, one of the fundamental premise on which the order was written is that TNHR&CE Act is a self contained statute. This is captured in sub-paragraph (i) of paragraph 5 of the order of Hon'ble Division Bench and the same reads as follows:

Sub-paragraph (i) of paragraph 5:



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'(i) The said parent Act was enacted in 1959 with the object of providing a self contained statute relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Tamil Nadu. The said parent Act was enacted with the intention of amending and consolidating the law relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Tamil Nadu. We are informed that about thirty six thousands Temples are administered by the Tamil Nadu Hindu Religious and Charitable Endowments Department, Government of Tamil Nadu, (hereinafter referred as 'TNHR & CE Department' for brevity) by applying the said parent Act.'

(e) In R.S.Mani v. The Joint Commissioner case, an order made by the jurisdictional Joint Commissioner of TNHR&CE Dept. being an order under Section 63(b) of TNHR&CE Act (to be noted Section 63(b) pertains to declaring the office of trusteeship of a temple as hereditary) was assailed. In and by order dated 09.11.2021 made in W.P(MD) No.20109 of 2021, I had negated the challenge by relegating the writ petitioner to



alternate remedy and while so relegating, the principles i.e., obtaining position that the TNHR&CE Act is a self contained code and Chapter V proceedings therein (to be noted, Chapter V is captioned 'Inquiry') is a legal drill which has a self contained mechanism were reiterated. This is articulated in paragraph 11 of this R.S.Mani judgment and the same reads as follows:

'11. The narrative supra as well as the dispositive reasoning set out supra will make it clear that the entire matter turns heavily on facts. As the matter turns heavily on facts, it is only appropriate that the same is dealt with by a statutory appellate authority rather than testing it in writ jurisdiction where the issues are decided on the basis of affidavits and counter-affidavits. This is more so, as TN HR & CE Act itself is a self contained code (as repeatedly held by this Court) and therefore, Chapter V proceedings of TN HR & CE Act is a legal drill which has self contained mechanism (as already alluded to supra).'

(f) In C.Rajamohan v. Commissioner & Another case, a Hon'ble Division Bench of this Court dismissed a PIL (Public Interest Litigation) wherein the petitioner wanted his representation regarding worship there to be considered. In dismissing this PIL, the Hon'ble Division Bench



proceeded on the basis that the TNHR&CE Act is a self contained code. This is articulated in paragraph 2 of this short order dated 26.04.2019 made in W.P(MD) No.10392 of 2019 reported in 2019 SCC Online Mad 10975. Paragraph 2 of C.Rajamohan's case reads as follows:

'2. In the opinion of this Court, the Hindu Religious and Charitable Endowment Act is a self-contained Code and a mandamus of this nature in a public interest litigation cannot be issued. Hence, this Writ Petition is dismissed with liberty to the petitioner to work out his remedy in the manner known to law. No costs.'

(xviii)The legal position / statutory scheme as adumbrated supra is further developed by case law jurisprudence. The development of case law jurisprudence is, a presiding deity, i.e., idol in a religious institution / temple is in the status of a minor and courts are guardians qua such minors. To put it differently, Courts are parens patriae qua such religious institutions / temples and custodia legis qua properties belonging to such religious institutions / temples;

(xix)It is common knowledge that many of religious institutions / temples are vested with / endowed with vast and valuable immovable properties which all have been dedicated



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for a common cause and therefore, the parens patriae, custodia legis jurisprudence development assume significance.

(xx) In the light of the adumbration of legal position thus far, in cases of appointment of Fit Person, a person / individual or group of persons / individuals who are in administration and management of a temple cannot complain that they are deprived of any legal right as there is none. Such persons for convenience are referred to as 'நடைமுறை நிர்வாகி' in the communications. Absent legal / statutory right, NJP (Natural Justice Principle) or violation of the same do not come into play. On the contrary, the rights of such 'நடைமுறை நிர்வாகி' are preserved, as appointment of Fit Person is after all a temporary / transitory provision, it is always open to 'நடைமுறை நிர்வாகி' to trigger a legal drill under TN HR&CE Act and get himself recognized if he or she has such legal entitlements.'



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4. We are convinced that the aforementioned principle laid down in **Lakshmanan's** case law is the correct obtaining position of law and we affirm the same.

5. Issue notice regarding admission to official respondents.

6. Mr.C.Selvaraj, learned Additional Government Pleader accepts notice for R1 and R3 and Mr.N.R.R.Arun Natarajan, learned Special Government Pleader accepts notice for R2.

7. Learned State counsel Mr.C.Selvaraj for R1 and R3 submits on instructions that a notice under Section 7 of TN HR & CE Act has been issued and the notice is dated 07.07.2023 and that has been followed by an order under Section 6 dated 19.09.2023 which is before us as part of the typed-set (page 26). This means that the Revenue Authorities have initiated action qua encroachment in said land.

8. Learned Additional Government Pleader, on instructions, submitted that the Office of the jurisdictional Special Tahsildar and his quarters are in close proximity to said land.

9. Reverting to said temple, aforementioned **K.Lakshmanan's** principle applies. This means that R2 is now vested with the power of administration and control qua said temple. Commissioner, TN HR & CE



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Department will do well to appoint an Executive Officer *inter alia* in accordance with Section 45 of said Act but at the moment we make it clear that R2 will be in control and administration of said temple and obviously the Mediation Hall / Dinning hall / Kitchen which is said to be an encroachment. For this purpose, we are impleading the Commissioner, Hindu Religious and Charitable Endowments Department, Kancheepuram District as R5. Registry is directed to carry out necessary and consequential amendments in the case file and in the order before uploading / before issuing certified copy of this order.

10. Learned counsel for R2 also submits that there appears to be some dissension between writ petitioner's spouse and R4 which has led to this writ petition but we are not really concerned with the same as there is no disputation that the said land is Government poramboke, it vests with the Government and now it would be under the control and administration of R2 as it is said to belong to said temple.

11. A photograph of the alleged encroachment has been placed before us and a scanned reproduction of the same is as follows:



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12. Considering the nature of the construction, we are of the view that if it is put to proper public use for the benefit of the local citizenry / populace by regulating the usage under the administration and control of R2 and not any private person, it would be beneficial to all concerned. After all, it is open to the State to put up a construction for public utility in Government land. However, we make it clear that R1 shall in consultation with R2 now file a report as to whether there is any other more imminent need for said land, say a hospital or school (for an illustration).

13. The aforementioned position makes it clear that the scope of captioned WP and WMP thereat have been drastically narrowed down. Therefore, with the consent of both sides, main WP is taken up with the consent of both sides.

14. We are acutely conscious that we are taking up the main WP without notice to R4, who is a private respondent. Therefore, we shall put in a safety valve qua private respondent i.e., R4 by saying that both writ petitioner and R4 shall be put on notice about any further proceedings and their rights if any will stand preserved in such proceedings.

15. The report of R1 in consultation with R2 in the aforesaid manner



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shall address the issue of public use as alluded to supra. If this report in this regard is in the negative, the notices already issued shall be carried to its logical end but if it is otherwise, public use will be regularized as per allusion supra.

16. Captioned writ petition disposed of in the aforesaid manner with the aforesaid observations and directives. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

24.06.2024

Index : Yes / No

Neutral Citation : Yes / No

gpa

P.S. I: Upload forthwith

P.S.II : All concerned including Registry of Madras High Court to act forthwith on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.

P.S:III Though the captioned Writ Petition is disposed of by this order, let the writ petition appear in the cause list under the cause list caption 'FOR REPORTING COMPLIANCE' on 22.07.2024.



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To

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1. The Government of Tamil Nadu
Rep. By its Principal Secretary to Government
Department of Revenue and Disaster Management
Fort St.George
Chennai – 600 009
2. The District Collector
State Highway 96
Opp. District Court
Palayapalayam
Erode – 638 011
3. The Tahsildar
Anthiyur Circle
Erode District – 638 501
4. The Assistant Engineer
Water Resources Department
Anthiyur
Erode – 638 501



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