



W.P.No.7995 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.7995 of 2025

and

W.M.P. No.8973 of 2025 in W.P. No.7995 of 2025

Panneerselvam,
S/o.Annamalai,
Administrator,
Arulmighu Selva Vinayagar and
Arulmighu Renukambal Temple,
Kotrampalayam Street,
Kanchipuram – 631 501.

... Petitioner

Vs.

- 1.The Commissioner,
Kanchipuram Corporation,
Corporation Office,
Kanchipuram – 631 501.
- 2.The District Collector,
Kancheepuram District,
Collectorate, Kancheepuram – 631 501.
- 3.N.Muthukumar
- 4.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
No.124, Uthamar Gandhi Salai
(previously Nungambakkam High Road),
Nungambakkam, Chennai – 600 034.



W.P.No.7995 of 2025

WEB COPY

5.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Kanchipuram.

... Respondents

(R4 and R5 impleaded suo motu
vide order dated 16.04.2025 in
W.P.No.7995 of 2025)

Writ Petition filed under Article 226 of The Constitution of India
praying to issue a Writ of Certiorari to call for the records pertaining to
the impugned order passed by the first respondent herein in
Na.Ka.No.2353/2024/F1 dated 27.02.2025 and quash the same.

For Petitioner : Mr.G.Karthikeyan,
Senior Counsel
for Ms.A.Jagadeeswari

For Respondents : Mr.RA.Gopinath,
Standing Counsel for R1
Mr.T.K.Saravanan,
Additional Government Pleader
for R2
Mr.S.Veeraraghavan
for Ms.G.Uma Maheswari for R3
Mr.S.Ravichandran,
Additional Government Pleader
(H.R. & C.E.) for R4 and R5



W.P.No.7995 of 2025

WEB COPY

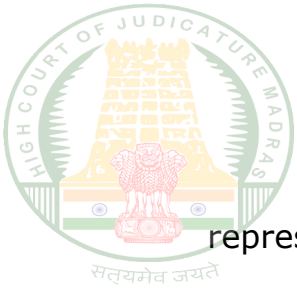
ORDER

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

Subject matter of captioned main 'Writ Petition' (hereinafter 'WP' for the sake of brevity) is a temple i.e., 'Arulmigu Sri Selvavinayagar Sri Renugadevi Temple, Kotrampalayam Street, Kanchipuram' (hereinafter 'said temple' for the sake of convenience and clarity) and alleged encroachment by way of further construction made by said temple i.e., further construction in T.S.No.333/2B, Ward No.32 in Nagaluthu Street (Kotrampalayam Street Junction), Kanchipuram to an extent of about 100 square meters.

2. Short facts are that R3 before us (Mr.N.Muthu Kumar, S/o.Mr.Munusamy) sent a representation dated 19.09.2023 to R1 (Commissioner, Kanchipuram Corporation) complaining about aforereferred alleged encroachment and requesting action; that complaining of inaction, R3 filed a writ petition in W.P.No.15761 of 2024 with a prayer to consider his representation dated 19.09.2023 and remove the alleged encroachment; that this W.P.No.15761 of 2024 came to be disposed of by another Hon'ble Division Bench in and by an order dated 03.07.2024 directing disposal of 19.09.2023

Page Nos.3/12



W.P.No.7995 of 2025

WEB COPY

representation within a time frame of eight weeks without expressing any opinion on merits of the matter; that alleging breach of this order, R3 filed a contempt petition in Contempt Petition No.3439 of 2024 and the same came to be disposed of as 'closed' on 09.04.2025 by yet another Hon'ble Division Bench; that according to writ petitioner in captioned WP, some portions of alleged offending construction qua said temple were demolished on 21.09.2024; that thereafter R1 issued a notice dated 18.02.2025 under Section 128(1)(b) of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' (hereinafter 'TNULB Act' for the sake of convenience and clarity) {cited (obviously erroneously) as Section 128(1)(b)(2) by R1 in the notice}; that writ petitioner responded to this 18.02.2025 notice by sending a detailed representation dated 25.02.2025; that writ petitioner sent this representation dated 25.02.2025 styling himself as 'நிர்வாகஸ்தர்' of said temple; that thereafter R1 made an order dated 27.02.2025 bearing reference Na.Ka.No.2353/2024/F1 citing 18.02.2025 notice and 25.02.2025 representation but without considering the contents of 25.02.2025 representation (to be noted, this 27.02.2025 order of R1 is impugned order); that prior to 18.02.2025 notice, it appears that the office of R1 has sent a செயல்முறை உத்தரவு dated 20.09.2024; that



W.P.No.7995 of 2025

assailing impugned order inter-alia on the ground that the representation of writ petitioner has not been considered, captioned main WP has been filed.

3. This Court having set out the trajectory the matter has taken thus far and the factual matrix in a nut shell now proceeds to set out other attendant details which are imperative for appreciating this order.

3.1 In the writ affidavit, the writ petitioner has averred that said temple does not come under Hindu Religious and Charitable Endowments and it is a private temple administered by the family of deponent (Mr.Panneerselvam, S/o.Mr.Annamalai) with active participation of about 300 families but there is no order of exemption under Section 4 of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [Tamil Nadu Act 22 of 1959]' {hereinafter 'TNHR & CE Act' for the sake of brevity}. There is also no declaration that said temple is a private temple. Therefore, said temple as of today is clearly a public temple within the meaning of sub-section (3) of Section 1 of TNHR & CE Act. In this view of the matter, we shall be



W.P.No.7995 of 2025

giving some directions infra by taking judicial notice of these facts which have come to our notice and by exercising our inherent powers.

3.2 As regards the impugned order, though the same refers to 25.02.2025 representation of the writ petitioner in *பார்வை* (cited as No.4), there is no discussion nay not even a whisper in the contents of the impugned order which is clearly contrary to proviso to Section 128(1)(b) of TNULB Act.

3.3 R3 before us points out that prior to 18.02.2025 notice, writ petitioner was visited with a *செயல்முறை உத்தரவு* dated 20.09.2024 but there is no material before us to demonstrate that it is a show cause notice within the meaning of Section 128(1)(b) of TNULB Act and it is imperative that any alleged encroacher is given an opportunity, more so, it is statutorily imperative vide Section 128(1)(b) as alleged encroachment is by way of immovable structure.

3.4 This Court deems it appropriate to extract and reproduce entire Section 128(1)(b) of TNULB Act together with proviso. We do so and the same (as obtaining today post amendment) is as follows:



WEB COPY



W.P.No.7995 of 2025

'128. Power to remove encroachment from public place. - (1) The Commissioner may, -

(a)

*(b) remove any immovable structure whether permanent or of temporary nature encroaching **street, public place, water body, tank, other water resources or any land** belonging to municipality or vested with the municipality within the municipal limit, after issuing a show cause notice for such removal, returnable within a period of **fifteen days** from the date of receipt thereof:*

Provided that the Commissioner shall consider any representation received within the time limit, before passing final orders.'

4. There can be no dispute that the alleged encroacher has to be given an opportunity before coercive action such as dispossession or demolition is taken. Section 128(1)(b) of TNULB Act is such a safety valve. A careful perusal of the language in which proviso to Section 128(1)(b) is couched makes it clear that R1 shall consider 'any representation' in making 'final orders'. In the case on hand, the representation of the writ petitioner dated 25.02.2025 has obviously not been 'considered'. As already alluded to supra, there is no mention about the number in the body of the impugned order though it is cited



W.P.No.7995 of 2025

as No.4 in பார்வை and there is no whisper about the representation. As proviso to Section 128(1)(b) of TNULB Act talks about 'any representation', we deem it appropriate to say that it is open to R3 to send a representation within seven days from today i.e., on or before 23.04.2025 and the same shall also be considered by R1 in making 'final orders'.

5. We are *suo motu* impleading the Commissioner, Hindu Religious and Charitable Endowments Department, No.124, Uthamar Gandhi Salai (previously Nungambakkam High Road), Nungambakkam, Chennai – 600 034 as R4 and the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Kanchipuram as R5. Mr.S.Ravichandran, learned Additional Government Pleader (H.R. & C.E.) accepts notice for R4 and R5.

6. To be noted, with the consent of all learned counsel, main WP was taken up and heard out.

7. We deem it appropriate to say that Joint Commissioner shall appoint a Fit Person forthwith which shall be a transitory provision but



W.P.No.7995 of 2025

all the rights and contentions of writ petitioner will stand preserved and protected qua TNHR & CE Act. All rights including the rights to claim as hereditary trustee or as a private temple if so advised and if so desired, are preserved but we make it clear that this order will neither impede nor serve as an impetus qua such claims. This means that Joint Commissioner, Hindu Religious and Charitable Endowments Department shall also be given an opportunity to send a representation within fifteen days from today i.e., on or before 30.04.2025 and the same shall also be considered. As we have preserved the rights of the writ petitioner, we make it clear that writ petitioner shall coordinate and cooperate with the 'Tamil Nadu Hindu Religious and Charitable Endowments Department' (hereinafter 'TNHR & CE Department' for the sake of convenience and clarity) in any further action that has to follow. We make it clear that this limb of the order is being made in exercise of our inherent powers under Article 226 of The Constitution of India by taking judicial notice of the facts which have been placed before us and it is further to be noted that there is allusion about this elsewhere supra in this order.



W.P.No.7995 of 2025

8. The order to be made by R1 (Commissioner) in the aforesaid manner after considering the representation of the writ petitioner dated 25.02.2025, representation from R3, if any, and representation from Joint Commissioner, shall be made as expeditiously as the business of R1 would permit but preferably within eight weeks from today i.e., on or before 11.06.2025 and the order shall be served under due acknowledgement on writ petitioner, R3 and R5.

9. If the aforementioned order is in favour of the said temple that would be curtains as regards the writ petitioner and it will be open to R3 to assail the order in a manner known to law. If the order is adverse qua said temple, the same shall be kept in abeyance for a fortnight from the date on which it is served on the writ petitioner and the Joint Commissioner so as to enable the writ petitioner and/or Joint Commissioner to work out remedies in law as available.

10. Though obvious this Court makes it clear that coercive action (if any and if that be so) shall be subject to and depending on the final orders to be passed by R1 under proviso to Section 128(1)(b) of TNULB Act and judicial interdict/direction if any qua 'final orders'.



W.P.No.7995 of 2025

11. Captioned WP is disposed of in the aforesaid manner. As we have made it clear that coercive action (if any and if that be so) shall be subject to and depending on final orders of R1, subject to judicial interdict/direction if any, captioned Writ Miscellaneous Petition (WMP) thereat has become otiose and the same is disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
16.04.2025

Index : Yes / No

Neutral Citation : Yes / No

mmi

To

- 1.The Commissioner,
Kanchipuram Corporation,
Corporation Office, Kanchipuram – 631 501.
- 2.The District Collector,
Kancheepuram District,
Collectorate, Kancheepuram – 631 501.
- 3.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
No.124, Uthamar Gandhi Salai
(previously Nungambakkam High Road),
Nungambakkam, Chennai – 600 034.
- 4.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department, Kanchipuram.

Page Nos.11/12



WEB COPY



W.P.No.7995 of 2025

**M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

mmi

W.P.No.7995 of 2025

16.04.2025

Page Nos.12/12