



W.P.Nos.8355 and 8357 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2025

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CORAM

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

and

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

W.P.Nos.8355 and 8357 of 2022

and

W.M.P. No.8324 of 2022 in W.P. No.8355 of 2022

and

W.M.P. No.8237 of 2022 in W.P. No.8357 of 2022

C.Gopinathan

... Petitioner in
W.P.No.8355 of 2022

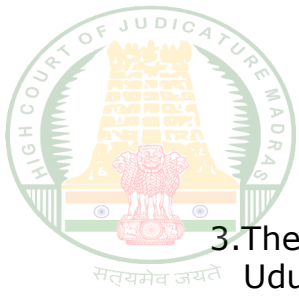
Uppiliya Naicker Makkal Sangam
(Reg. No.212/2018) rep. By its President
N.Krishnasamy,
S/o.Nallavan Naicker,
Having Office at No.1/53, Vadugapalayam,
Udumalpet Taluk,
Tiruppur District – 642 205.

... Petitioner in
W.P.No.8357 of 2022

VS.

1.The District Collector,
Tiruppur District,
Tiruppur.

2.The Revenue Divisional Officer,
Tiruppur District,
Tiruppur.



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3.The Tahsildhar,
Udumalpet Taluk,
Tiruppur District.

4.The Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowments Department,
No.124, Uthamar Gandhi Salai
(previously Nungambakkam High Road),
Nungambakkam, Chennai – 600 034.

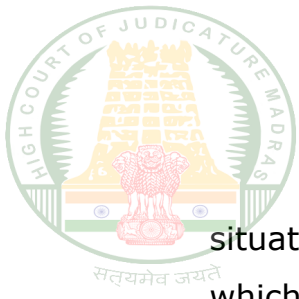
5.The Assistant Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowments Department, Tiruppur,
Tiruppur District.

... Respondents in
both WPs

(R4 and R5 suo motu impleaded vide
order dated 29.04.2025 in W.P.Nos.8355
and 8357 of 2022)

Prayer in W.P. No.8355 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents not to demolish the Karupparaya Swami Temple also worshipped as Chinna Karuppa Swami Temple situated at Pallapalayam Village, Udumalpet Taluk, Tiruppur District, which is a family deity of the petitioner's community namely the Devendrakula Vellala Community, which is ancient by a century.

Prayer in W.P. No.8357 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents not to demolish the Karuvandaraya Temple



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situated at Pallapalayam Village, Udumalpet Taluk, Tiruppur District, which is a family deity of the petitioner's community namely the Uppiliya Naicker Community, which is ancient by a century.

For Petitioner : Mr.G.Karthikeyan,
Senior Counsel
for Mr.E.Karthik Raja
in both WPs

For Respondents : Mr.T.K.Saravanan,
Additional Government Pleader
for R1 to R3 in both WPs
Mr.K.Karthikeyan,
Government Advocate (H.R. & C.E.)
for R4 and R5 in both WPs

COMMON ORDER

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

Captioned 'Writ Petitions' (hereinafter 'WPs' for the sake of brevity) pertain to two temples viz., '(a) Karupparaya Swami Temple also worshipped as Chinna Karuppa Swami Temple and (b) Karuvandaraya Temple both situate at Pallapalayam Village, Udumalpet Taluk, Tiruppur District' (hereinafter 'said temples' collectively for the sake of convenience and clarity). However, for the sake of specificity, 'Karupparaya Swami Temple also worshipped as Chinna Karuppa Swami Temple' shall be referred to as 'said temple I' and 'Karuvandaraya Temple' shall be referred to as 'said temple II'.



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2. The crux and gravamen of the captioned matters is an allegation that said temples are situate in a waterbody and are therefore liable to be demolished.

3. Mr.G.Karthikeyan, learned senior counsel instructed by Mr.E.Karthik Raja, learned counsel on record for writ petitioners submits on instructions that said temples are more than 100 years old and when the temples came into existence, the lands in which they are situate were not classified as waterbodies however as counter affidavits, status reports have been filed and as there is no dispute between the parties regarding the survey numbers and the area where said temples are situate we refrain from delving into the same in detail more so in the light of the order which we propose to make.

4. Learned State counsel Mr.T.K.Saravanan (Additional Government Pleader) very fairly submits that a joint survey can be conducted, a survey report can be drawn up and if said temples are found to be encroachments, action can be initiated either under 'The Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)'



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{hereinafter 'said 1905 Act' for the sake of brevity} or under 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007' (hereinafter 'Tanks Act' for the sake of convenience and clarity). This means that post survey, if said temples are found to be encroachments, they would be show caused and opportunity would be given either in accordance with the scheme of the statute qua said 1905 Act or as per Tanks Act in the light of *T.K.Shanmugam principle {T.K.Shanmugam Vs. State of Tamil Nadu reported in 2015 (5) LW 397}*. This puts to rest the anxiety of the writ petitioners and we make it clear that it is open to the writ petitioners to send representations raising all available points including points raised in the captioned WPs if action under said 1905 Act or Tanks Act is initiated post survey.

5. Before we write the operative portion of the order, we deem it appropriate to write that said temples are admittedly public temples as of today within the meaning of sub-section (3) of Section 1 of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act 22 of 1959)' [hereinafter 'TN HR & CE Act' for the sake of convenience]. Therefore, we suo motu implead the Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Department,



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No.124, Uthamar Gandhi Salai (previously Nungambakkam High Road), Nungambakkam, Chennai – 600 034 and the Assistant Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Department, Tiruppur, Tiruppur District as R4 and R5 respectively. Mr.K.Karthikeyan, learned Government Advocate (H.R. & C.E.) accepts notice for R4 and R5.

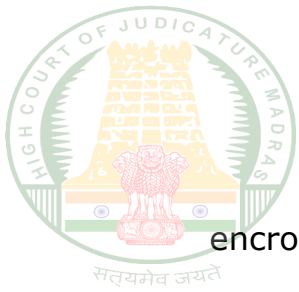
6. As said temples as of today are public temples it is only appropriate that R4 and R5 appoint Fit Person/s forthwith. As Fit Person is a transitory provision we make it clear that all the rights and contentions of the writ petitioners and/or any other person concerned with said temples are preserved/protected vide TN HR & CE Act or under any other law. As regards TN HR & CE Act, as a matter of illustration, we make it clear that it will be open to the writ petitioners to seek declaration of the office of trusteeship of the temples as hereditary and/or seek framing of a scheme under TN HR & CE Act. To be noted, these are only illustrations and are not exhaustive. However, we make it clear that all rights and contentions of writ petitioners are preserved.



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7. In ***Girnar Traders (3) Vs. State of Maharashtra*** reported in **(2011) 3 SCC 1**, a Constitution Bench of Hon'ble Supreme Court declared the law qua self contained Code and held that a statute which is a complete legislation with regard to the purpose for which it is enacted and provides for complete machinery to deal with purposes sought to be achieved by law with dependence on other legislations being absent or at best is minimal is a self contained Code. Applying ***Girnar*** principle, this Court has repeatedly held that said 1905 Act is a self-contained Code. The reason *inter-alia* is that there is a provision to have the alleged encroacher show caused under Section 7 of said 1905 Act followed by an order (considering the cause shown). The order under Section 6 is appealable under Section 10 [District Collector is the appellate authority] and there is a provision for further revision to the Government under Section 10-A of said 1905 Act. Pending appeal / revision, there is a provision for making interim prayer vide Section 10-B of said 1905 Act. Therefore, said 1905 Act is a self-contained Code in every sense of the expression.

8. In ***T.K.Shanmugam's case***, Hon'ble Full Bench of this Court put in place a procedure for applying Tanks Act for removal of



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encroachments wherein and whereby a noticee under Tanks Act should be show caused and given an opportunity. To be noted, in **T.K.Shanmugam**, a Full Bench of this Hon'ble Court upheld the principle laid down in **T.S.Senthil Kumar's** case being **T.S.Senthil Kumar vs. Government of Tamil Nadu** reported in **(2010) 3 MLJ 771**, wherein a Division Bench of this Court negated a challenge to certain provisions of the Tanks Act. As regards the procedure put in place, relevant paragraphs in **T.K.Shanmugam** are sub-sub-paragraphs (i) (ii) and (iii) of sub-paragraph (f) of paragraph 15 which reads as follows:

'15. Certain provisions of Tank Act namely, Sections 4 to 10 were challenged in a Writ Petition with a prayer to declare those provisions as null and void and contrary to Article 14 of the Constitution of India on the ground that those provisions confer upon the executive, unguided and uncanalised discretionary power, since they denied to the persons aggrieved an opportunity of being heard. The said Writ petition was heard by a Division Bench to which one of us (M.Sathyanarayanan,J.) was a party. The Division Bench took note of the various decisions including the decision in the case of Sivakasi Region Tax Payers Association (supra), disposed of the Writ Petitions without declaring the provisions of the Act as unconstitutional, since no opportunity is given and held that there is nothing in the Act which excludes the principles of natural justice, the Act (Tank Act) does not specifically indicate



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that the encroachers do not have right to be heard and issued the following directions vide judgment dated 10.02.2010, reported in 2010 3 MLJ 771.

(a)

(b)

(c)

(d)

(e)

(f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

(i) When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey indicates that the place in his/her occupation is an encroachment and secondly, the notice in Form-III of the Rules may be issued.

(ii) On receipt of the said notice, the encroacher may give his/her objections relating to the classification of the land in his/her occupation and the nature of the encroachment within a period of two weeks.

(iii) Thereafter, the authorities shall consider the objections and pass appropriate orders, in accordance with the provisions of the



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Act, giving time to the encroachers to remove the encroachment.'

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9. The above means that said temples would be put on notice and an opportunity would be given irrespective of whether proceedings are commenced under said 1905 Act or under Tanks Act. In the light of the narrative, discussion and dispositive reasoning thus far, the following order is made:

9.1 R4 or R5 shall appoint Fit Person/s for said temples as expeditiously as possible but in any event on or before 31.05.2025. It is open to R4 or R5 to appoint same person as Fit Person for said temples or different persons for said temple I and said temple II;

9.2 Writ petitioners undertake to cooperate with the Fit Person/s so appointed;

9.3 As already alluded to supra, it is open to the writ petitioners to seek declaration of office of trusteeship of said temples as hereditary vide Section



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63(b), seek scheme under Section 64 or seek a declaration that said temples are public temples. If such a course is adopted, this order will neither impede nor serve as a impetus qua such proceedings;

9.4 As already alluded to supra, R3 under the supervision of R2 shall conduct a joint survey after putting on notice the writ petitioners and Fit Person/s. Joint survey shall be done post 31.05.2025 i.e., on or before 30.06.2025;

9.5 Report shall be drawn by R3 and if any encroachment is found, action shall be commenced either under said 1905 Act or under Tanks Act on or before 31.07.2025;

9.6 Irrespective of whether action is under said 1905 Act or Tanks Act, the Fit Person/s shall be show caused as per said 1905 Act and/or **T.K.Shanmugam** principle. Opportunity shall be given, all objections shall be considered and orders shall be passed. To be noted,



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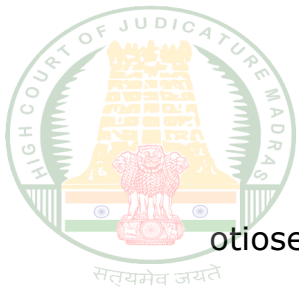
rights of the writ petitioners to send representations are also preserved if such a scenario unfurls;

9.7 Though obvious we make it clear that post survey if no encroachment is found that will be curtains on the matter;

9.8 All questions are left open for writ petitioners to send representations and/or seek remedies under TN HR & CE Act;

*9.9 Coercive action (if any and if at all that be so) shall be after opportunity being given as per said 1905 Act or **T.K.Shanmugam** principle.*

10. Captioned two WPs are disposed of in the aforesaid manner. As we have made it clear that the writ petitioners' rights are preserved and coercive action (if any and if that be so) shall be subject to the procedure under said 1905 Act and/or **T.K.Shanmugam** principle, captioned Writ Miscellaneous Petitions (WMPs) thereat have become



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otiose and the same are disposed of as closed. There shall be no order as to costs.

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(M.S.,J.) (K.G.T.,J.)
29.04.2025

Index : Yes
Neutral Citation: Yes
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P.S. : Registry is directed to not to show the name of Mr.G.Karthikeyan in the cause list as learned counsel has since been designated as Senior Advocate by this Court.

To

- 1.The District Collector,
Tiruppur District, Tiruppur.
- 2.The Revenue Divisional Officer,
Tiruppur District, Tiruppur.
- 3.The Tahsildhar,
Udumalpet Taluk, Tiruppur District.
- 4.The Commissioner,
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- 5.The Assistant Commissioner,
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**M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

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