IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.9354 of 2021

E.Uma Sudhan ... Petitioner

Vs.

1.The District Collector,
Thirupur, Thirupur District.

2.The Zonal Director,
Municipality Administration,
Kumaran Road, Thirupur,
Thirupur District.

3.The Commissioner,
Udumalaipet Municipality,
Udumalaipettai, Thirupur District.

4.Arulmigu Sri Black Mariamman Temple
rep. By Administrator Mr.Jayakumar,
Dhali Road, D.V.Pattanam,
Udumalaipettai, Thirupur District.

5.Sri Senthil Vinayagar Temple
rep. By Administrator Mr.Dhanabal,
Dhali Road, D.V.Pattanam,
Udumalaipettai, Thirupur District.

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

7.The Joint Commissioner,
Tamil Nadu Hindu Religious and Charitable Endowments Department,
First Floor, Tiruppur Palladam Road,
Tiruppur – 641 604.

8.The Assistant Commissioner,
Tamil Nadu Hindu Religious and Charitable Endowments Department,
Tiruppur. ... Respondents

(R6 to R8 are suo motu impleaded
vide order dated 19.08.2025 in W.P.No.9354 of 2021)

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 to remove the encroachment by demolishing the compound wall constructed by the fourth respondent's temple viz., Arulmigu Sri Black Mariamman Temple and the fifth respondent's temple viz., Sri Senthil Vinayagar Temple in Scheme Road B5B5, comprising T.S.No.1, Part of Ward A, Block No.1, Part & 6, 10 Part, 21 Part, 22 Part, 23 Part and 24 Part Ward E, Block 1 situated at SNR Layout, Udumalaipettai, Thirupur District by considering the petitioner's representation dated 22.02.2021.

For Petitioner : Mr.E.Sathiyaraj

For Respondents : Mr.M.S.Arasakumar,
Government Advocate
for R1 and R2
Mr.B.Anand for R3
Mr.N.Umapathi for R4
Mr.B.Gopalakrishnan for R5
Mr.S.Ravichandran,
Addl. Govt. Pleader (H.R. & C.E.)
for R6 to R8

ORDER

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

Captioned main 'Writ Petition' (hereinafter 'WP' for the sake of brevity) has been filed with a RoE (Removal of Encroachment) prayer.

2. Mr.E.Sathiyaraj, learned counsel on record for writ petitioner, Mr.M.S.Arasakumar, learned Government Advocate for R1 and R2, Mr.B.Anand, learned counsel for R3, Mr.N.Umapathi, learned counsel for R4 and Mr.B.Gopalakrishnan, learned counsel for R5 are before us.

3. Captioned WP was taken up with the consent of aforementioned learned counsel.

4. As regards R4 and R5, we adopt ***M.K.Gandhi*** *principle* **(M.K.Gandhi Vs. District Collector, Salem and others)** reported in **2025:MHC:1668 (Neutral Citation of Madras High Court)** being order dated 25.06.2025 made in W.P.No.13831 of 2022 and paragraphs 13 to 21 of ***M.K.Gandhi,*** as extracted and reproduced in the order of this Court dated 07.08.2025 in W.M.P. No.32182 of 2025 in W.P.No.28737 of 2025, read as follows:

> *'13. TN HR & CE Act, which received Presidential assent on 19.11.1959, kicked in (came into force) on and from 01.01.1960 (vide a notification dated 16.12.1959 notified in Fort St. George Gazette dated 16.12.1959 made under Section 1(4)(a). To be noted, sub section (4) of section 92 insofar as it relates to consultative committees and sub committees thereof and section 116(2)(xxi) did not kick in on 01.01.1960 and these two provisions were to come into force retrospectively on 28.11.1958 vide section 1(4)(b) of TN HR & CE Act.*
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> *14. Prior to (Presidential assent) 19.11.1959, to be precise on 13.04.1959, the SoR (Statement of Objects and Reasons) qua TN HR & CE Act was published in the Fort St. George Gazette Extraordinary. A careful perusal of the SoR makes it clear that it was considered necessary to put in place a comprehensive Act which is applicable to all 'Hindu Public Religious institutions and endowments' except Incorporated and Unincorporated Devaswoms in Kanyakumari district and Shencottah taluk of Tirunelveli*

District. Suffice to say that the object of the TN HR & CE Act inter-alia is to make it applicable to all 'Hindu public religious institutions'. This part of the SoR has been codified vide sub section (3) of section 1 which makes it clear that TN HR & CE Act is applicable to all (a) Hindu public religious institutions, (b) endowments, (c) incorporated Devaswoms and (d) unincorporated Devaswoms. As regards these four categories, all four terms have been defined. (a)religious institution, (b) endowment, (c) incorporated Devaswoms and (d) unincorporated Devaswoms are defined vide sub sections (18), (17), (12) and (23) respectively, all of section 6 of TN HR & CE Act.

15. The definition of 'religious institutions' vide Section 6(18) makes it clear that it includes five categories of institutions, namely (a) math, (b) temple, (c) specific endowment, (d) samadhi and (e) brindhavan. While three are defined, two are explained. Math, Temple and specific endowment are defined vide sub sections (13), (20) and (19) of section 6, samadhi and brindhavan are explained vide Explanation (1) and (2) respectively of section 6(18).

16. Therefore, it is clear that 'temple' is a 'religious institution', both of which are defined terms. The definition of temple vide section 6(20) makes it clear that a place of public religious worship which is dedicated to or which is 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, is a temple irrespective of designation by which it is known.

17. There is no disputation before this court that 'Sri Varasithi Vinayagar Temple and Sri Sorna Ellai Kaliyamman Temple *in Thookkanampatti village, Mettur Taluk, Salem District' which are collectively being referred to as 'said temples' are places of public religious worship inter-alia for the benefit of Hindu Community. Therefore, said temples snugly fit into the definition of 'temple' vide section 6(20). This in turn means that said temples are 'religious institutions' within the meaning of section 6(18). As already alluded to supra, TN HR & CE Act is applicable to all Hindu public religious institutions.*

18. The obtaining legal position of TN HR & CE Act applies to 'all' Hindu public religious institutions is buttressed by a careful perusal of Sections 3 and 4 of TN HR & CE Act. While section 3 deals with the power of the Government to extend TN HR & CE Act to charitable endowments, section 4 deals with the power of the Government to exempt any religious institution from the provisions of TN HR & CE Act or Rules thereunder. The above means that only with regard to charitable endowments, the Government has to extend all or any of the provisions of the Act and rules made thereunder if circumstances set out in section 3 comes into play. To be noted, 'charitable endowments' are different from 'temples' which are 'religious institutions'. As already alluded to supra, 'temple' is defined vide section 6(20) and 'religious institution' which is defined vide section 6(18) includes a temple but 'Charitable endowments' is defined separately vide section 6(5) which talks about property given or endowed for the benefit of Hindu or Jain communities or any section thereof for the support or maintenance of rest houses, choultries, patasalas, etc.,

19. The above obtaining legal position which is clear as daylight from the ecosystem of TN HR & CE Act means that TN HR &

CE Act per se applies to all Hindu public religious institutions which includes temples and as regards, charitable endowments, only if it is extended by the Government by way of notification vide section 3. It is clear from the legal architecture of the statute that absent exemption under section 4 or declaration that a temple is a private temple, irrespective of whether a religious institution (temple) finds place in the list to be published by the Commissioner of TN HR & CE Department under section 46 or not, it is a public temple under the sweep of the statute. The reason is TN HR & CE Act provides for appointment of trustees and Fit person for religious institutions (temples) which do not find place in section 46 list also. This is clear from section 49 which provides for jurisdictional Assistant Commissioner appointing Fit persons to religious institutions which are not included in section 46 list. If a temple find place in the list published by the Commissioner under section 46, the Government, Commissioner, Joint Commissioner / Deputy Commissioner are vested with powers to appoint Fit person/s pending constitution of Board of Trustees. If a temple does not find place in the list, the jurisdictional Assistant Commissioner will have power under section 49 to appoint Fit person.

20. The sum sequitur is, individuals cannot self style themselves as President, Secretary, Treasurer or Administrator of a temple by whatever name called de hors TN HR & CE Act unless there is exemption under section 4. Likewise, a Trust or any other entity cannot style itself to be in administration of a temple de hors TN HR & CE Act. If individuals have any hereditary right or other rights to be in management and administration of a temple, *they have to resort to various provisions under Chapter V of TN HR & CE Act and obtain suitable orders from the quasi judicial authority.*

21. Therefore, absent exemption under Section 4 or any decree from a Civil Court to the effect that a temple is a private temple, said TN HR & CE Act would apply. In this view of the matter, as there is no material before us to demonstrate that said temples are private temples, though there is an averment in the aforementioned support affidavit that said temples are private temples, we deem it appropriate to suo motu implead the following officials as RR8 to 10 respectively:

(i) The Commissioner
Hindu Religious and Charitable Endowments Department
No.119, Uthamar Gandhi Salai
Nungambakkam, Chennai 600 034
(ii)The Joint Commissioner
Hindu Religious and Charitable Endowments Department
Kottai Mariamman Temple Complex
Salem 636 001
(iii) The Assistant Commissioner
Hindu Religious and Charitable Endowments Department
Kottai Mariamman Temple Complex
Salem 636 001

Mr.K.Karthikeyan, learned Government Advocate, accepts notice on behalf of newly impleaded RR8 to 10 and also consents for having the main WP heard out.'

5. Applying ***M.K.Gandhi*** *principle,* we add the Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Department, No.124, Uthamar Gandhi Salai (previously Nungambakkam High Road), Nungambakkam, Chennai – 600 034, the Joint Commissioner,

Tamil Nadu Hindu Religious and Charitable Endowments Department, First Floor, Tiruppur Palladam Road, Tiruppur – 641 604 and the Assistant Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Department, Tiruppur as R6, R7 and R8 respectively. Mr.S.Ravichandran, learned Additional Government Pleader (HR & CE) accepts notice for R6 to R8 and consents for captioned main WP being heard out.

6. Registry to carry out necessary and consequential amendments in the case file forthwith but in any event before uploading/before issue of certified copy.

7. At the outset, we make it clear that R8 shall now appoint a Fit Person/s for Arulmigu Sri Black Mariamman Temple, Dhali Road, D.V.Pattanam, Udumalaipettai, Thirupur District as well as for Sri Senthil Vinayagar Temple, Dhali Road, D.V.Pattanam, Udumalaipettai, Thirupur District within four weeks from today i.e., on or before 16.09.2025. Post 16.09.2025, after putting on notice writ petitioner, Mr.Jayakumar (R4 for convenience) and Mr.Dhanabal (R5 for convenience) and Fit Person/s to be appointed, survey shall be conducted on or before 11.11.2025 and permitting all concerned to be

present during survey. Survey report shall be drawn up by the jurisdictional Tahsildar and in the survey, if any encroachment is found, action under appropriate applicable law shall be commenced within four weeks therefrom i.e., on or before 09.12.2025.

8. Captioned WP is disposed of in the aforesaid terms. There shall be no order as to costs.

(M.S.,J.) **(H.C.,J.)**
19.08.2025

Index : Yes
Neutral Citation : Yes
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HEMANT CHANDANGOUDAR, J.,

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