IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **T.VINOD KUMAR**

W.P.No.29566 of 2025

Manimogan,
President,
Administrative Committee of
Sri Mala Kovil, Rangampalayam,
S/o.Palanisamy Naicker,
Rangampalayam, Kabilakurichi,
Kabilarmalai Post, Paramathi Velur Taluk,
Namakkal District. .. Petitioner

Vs.

1.The District Collector,
Collectorate Building,
Namakkal District, Namakkal.

2.The District Revenue Officer,
Collectorate Buildings, Namakkal.

3.The Revenue Divisional Officer,
Tiruchengode, Namakkal.

4.The Tahsildar,
Paramathi Velur Taluk, Namakkal District.

5.Selvam
6.Ganesh
7.Perumayi
8.Annakodi
9.Prakash

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

11.The Joint Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowments Department,
Erode.

12.The Assistant Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowments Department,
Namakkal, Namakkal District. ... Respondents
(R10 to R12 are suo motu impleaded
vide order dated 07.08.2025 in W.P.No.29566 of 2025)

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the first respondent to consider the representation of the petitioner dated 07.02.2025 for removal of encroachment made in Survey No.95/3 to an extent of Hec.1.47.0 situated in Rangampalayam, Kabilakurichi, Kabilarmalai Post, Paramathi Velur Taluk, Namakkal District and also to take necessary steps to protect and recover mala temple properties.

For Petitioner : Mr.N.Umapathi
For Respondents : Mr.T.K.Saravanan
Additional Government Pleader
for R1 to R4
Mr.S.Ravichandran,
Addl. Govt. Pleader (HR & CE)
for R10 to R12

O R D E R

[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 'land comprised in Survey No.95/3 in 30, Kabilakurichi Village, Paramathivelur Taluk, Namakkal District' (hereinafter 'said land' for the sake of convenience and clarity).

2. A temple which goes by the name 'Mala Kovil' (hereinafter 'said temple' for the sake of convenience and clarity) is situate in said land. Writ petitioner Manimogan styling him as President of Administrative Committee of said temple has filed the captioned WP with RoE (Removal of Encroachment) prayer qua said land alleging that private respondents/R5 to R9 have encroached upon said land.

3. Issue notice to official respondents.

4. Mr.T.K.Saravanan, learned Additional Government Pleader accepts notice for official respondents/R1 to R4 and submits on instructions that said temple is not a private temple as alleged. There is no material before this Court to demonstrate that said temple is

private temple. In this view of the matter, we deem it appropriate to implead 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, Erode and the Assistant Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Department, Namakkal, Namakkal District as R10, R11 and R12 respectively. We issue notice to R10 to R12. Mr.S.Ravichandran, learned Additional Government Pleader (HR & CE) accepts notice for R10 to R12.

5. This Court in ***M.K.Gandhi*** *case* **(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 has elaborately set out eco system and architecture of 'The Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (Act 22 of 1959)' [hereinafter 'TN HR & CE Act' for the sake of brevity] and the position qua public temples. Paragraphs 5 and 11 of ***M.K.Gandhi*** *case* will make it clear that facts

are identical and ***M.K.Gandhi*** principle would apply to the case on hand. Paragraphs 5 and 11 of ***M.K.Gandhi*** *case* read as follows:

> *'5. In the above suit, besides D1, who is styled as President, 5 other individuals who have been described as Vice President, Secretary, Joint Secretary, Treasurer and Sub Treasurer respectively are shown to be representing said temples.'*

> *'11. It is in the aforesaid backdrop that removal of unauthorised construction prayer has been made in captioned WP and this has impelled this Court to plough into the matter.'*

6. Paragraphs 13 to 21 of ***M.K.Gandhi*** *case* laid down legal principles and the same 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.*
>
> *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.'

(In the aforesaid extract, as minor typo has been noticed in paragraphs 13 and 14, paragraphs 13 and 14 have been corrected (errors eliminated) and therefore, these two paragraphs shall not be construed as an extract qua **M.K.Gandhi** case.)

7. Applying the above principle, we direct R12 to appoint a Fit Person for said temple as expeditiously as the business of R12 would permit but in any event within a fortnight from today i.e., on or before 21.08.2025. The Fit person shall start discharging his/her duties immediately on being appointed by R12. As regards this aspect of the matter, we make it clear that rights and contentions of writ petitioner/Mr.Manimogan (if any) with regard to management and administration of said temple will stand preserved and notwithstanding our directive to appoint a Fit Person, it is always open to the writ petitioner to stake his claim in an appropriate Fora in a manner known to law. If such a course is adopted by the writ petitioner, the claim shall be examined on its own merits and in accordance with law.

8. In the light of the narrative thus far, it is clear as day light that said land cannot be treated as 'temple land' and Section 78 of TN HR & CE Act cannot be resorted to, however, as regards revenue records available before this Court, it is public land and therefore 'The Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity} can be resorted

to.

9. R4 shall conduct a joint survey after putting on notice writ petitioner, private respondents/R5 to R9, Fit Person for said temple to be appointed or any other person concerned in this matter and such survey shall be conducted as expeditiously as the business of R4 would permit but in any event within a period of eight weeks from today i.e., on or before 02.10.2025.

10. Post survey, a survey report shall be drawn up. In the survey report, if any encroachment is found, appropriate action under said 1905 Act shall be commenced by the official respondent concerned within a period of eight weeks from 02.10.2025 i.e., on or before 27.11.2025. On being show caused/given an opportunity qua said temple, all the rights and contentions of noticees (private respondents/R5 to R9 and/or any other alleged encroacher/s, writ petitioner and also Fit Person) are preserved as we have not expressed any opinion or view one way or the other about alleged encroachment. To be noted, this is the safety valve which we have put in place qua said temple and private respondents/R5 to R9. Therefore, we dispense

with notice to private respondents/R5 to R9 and take up the captioned main WP in the Admission Board itself with the consent of learned counsel on both sides.

11. Removal of encroachment commenced under said 1905 Act on or before 27.11.2025 shall be continued and concluded by carrying it to its logical end as expeditiously as the business of official respondents would permit.

12. Learned State counsel submits that there is a proposal to issue patta to private respondents/R5 to R9 as according to learned State counsel, the alleged encroachment of R5 to R9 is an unobjectionable poramboke. We express no opinion on the same. We make it clear that the said temple represented by its Fit Person shall be given an opportunity to send its objections, if any, in writing before a decision is taken as regards issue of patta. This means issue of patta, if any, shall be after appointment of Fit Person qua said temple. If patta is not to be issued, proceedings under said 1905 Act will follow.

13. As regards said temple, as the same is also situate in said land, it is open to official respondents/R1 to R4 in consultation with R10 to R12 to take a call and pass suitable orders. In this regard, we deem it appropriate to add that it is open to State to issue patta to said temple also along with R5 to R9 as it is the stated position of learned State counsel that encroachment in said land is unobjectionable and subject to certain conditions being satisfied, patta can be issued.

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

(M.S.,J.) **(T.V.K.,J.)**
07.08.2025

Index : Yes / No
Neutral Citation : Yes / No
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To

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M.SUNDAR, J.,
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T.VINOD KUMAR, J.,

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