



W.A.Nos.2401 of 2023 and 2570 of 2024,
W.P.No.13881 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.03.2025

DATE OF DECISION : 30.04.2025

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.A.Nos.2401 of 2023 and 2570 of 2024
and
C.M.P.No.20153 of 2023 in W.A.No.2401 of 2023
C.M.P.No.18463 of 2024 in W.A.No.2570 of 2024
and
W.P.No.13881 of 2024
and W.M.P.No.15054 of 2024 in W.P.No.13881 of 2024

W.A.No.2401 of 2023 :

- 1.The Ministry of Culture,
Rep. By its Secretary,
Government of India,
New Delhi.
- 2.The Director of Archaeology,
Archaeological Survey of India,
Dharohar Bhavan, 24, Tilak Marg,
New Delhi-110 001.
- 3.The Superintending Archaeologist,
Archaeological Survey of India,
Secretariat, Fort St. George,
Chennai-600 009.



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4.National Monument Authority,
Ministry of Culture,
No.24, Tilak Marg, Bhagwan Das Lane,
Mandi House, New Delhi-110 001.

5.Regional Director (South) ASI &
Competent Authority,
National Monument Authority,
Fort St. George, Chennai-600 009. .. Appellants

Vs.

B.Manoharan .. Respondent

W.A.No.2570 of 2024 :

T.Mohan .. Third party Appellant

Vs.

1.B.Manoharan

2.The Ministry of Culture,
rep by its Secretary,
Government of India,
New Delhi
(R2 impleaded suo motu vide order
dated 09.02.2023 in W.P.No.32163/2022)

3.The Director General of Archaeology,
Archaeological Survey of India,
Dharohar Bhavan, 24, Tilak Marg,
New Delhi – 110 001.



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4.The Superintending Archaeologist,
Archaeological Survey of India,
Secretariat, Fort St. George,
Chennai-600 009.

5.National Monument Authority,
Ministry of Culture,
No.24, Tilak Marg, Bhagwan Das Lane,
Mandi House, New Delhi-110 001.

6.Regional Director (South) ASI &
Competent Authority,
National Monument Authority,
Fort St. George, Chennai-600 009.
(RR5 and 6 impleaded suo motu vide
order dated 09.02.2023 in WMP No.696/2023
in WP.No.32163 of 2022)

.. Respondents

W.P.No.13881 of 2024 :

T.Mohan

.. Petitioner

Vs.

1.The Registrar General,
Madras High Court,
Chennai-104.

2.The Registrar (Administration),
Madras High Court,
Chennai-104.

.. Respondents

W.A.No.2401 of 2023 has been filed under Clause XV of the Letters Patent seeking to set aside the order dated 27.06.2023 made in W.P.No.32163 of 2022 passed by the Hon'ble Judge of this Hon'ble



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High Court and thus render justice.

W.A.No.2570 of 2024 has been filed under Clause XV of the Letters Patent seeking to set aside the order dated 27.06.2023 passed in W.P.No.32163 of 2022 on the file of this Hon'ble Court and pass other necessary orders as it may deem proper under the facts and circumstances of the case and thus render justice.

W.P.No.13881 of 2024 has been filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to forthwith engage experts in conservation, architecture and town planning to frame a comprehensive master plan for the future development of the precincts of our High Court and refrain from erecting any structures including the proposed 5 storey building in the law college campus inside the High Court premises until the preparation of the master plan and pass such further order or orders as may be fit, proper and necessary in the facts and circumstances of the case and thus render justice.

For Appellant : Mr.R.Rajesh Vivekananthan,
Dy. Solicitor General of India
in W.A.No.2401 of 2023

Mr.Sriram Panchu, Senior Advocate
for Mr.K.R.Arun Shabari
in W.A.No.2570 of 2024

For Petitioner : Mr.A.Yogeshwaran
in W.P.No.13881/2024



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W.A.Nos.2401 of 2023 and 2570 of 2024,
W.P.No.13881 of 2024

For Respondents : Mr.G.Masilamani, Senior Advocate
for Mr.S.Siva Shanmugam
in W.A.No.2401 of 2023
and for R-1 in W.A.No.2570 of 2024

Mr.R.Rajesh Vivekananthan
Dy. Solicitor General of India
for RR2 to 6 in W.A.No.2570 of 2024

Mr.B.Vijay, Standing counsel
in WP.No.13881 of 2024

COMMON JUDGMENT

M.SUNDAR, J.

This common judgment will govern captioned two Writ Appeals, two Civil Miscellaneous Petitions thereat, captioned main Writ Petition and the lone Writ Miscellaneous Petition thereat.

2.In captioned 'two Writ Appeals' ('W.As' for the sake of brevity) which are intra court appeals, 'order dated 27.06.2023 made in W.P.No.32163 of 2022 by a Hon'ble Single Judge of this Court' [hereinafter 'impugned order' for the sake of convenience] has been assailed. A Hon'ble Single Judge of this Court, vide the impugned order



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has allowed the writ petition filed by a member of the Bar (practicing Advocate of this Court) with a prayer to declare that the Tomb of David Yale and Joseph Hynmer in the compound of the Madras Law College (part of Madras High Court campus) is not an ancient monument and with a further prayer for consequential direction to official respondents to relocate the tomb within a time frame. Captioned 'W.A.No.2401 of 2023' shall be referred to as 'said appeal' and 'W.A.No.2570 of 2024' which has been filed assailing the same impugned order (by a person who is not a party to the W.P. before Hon'ble Single Judge) shall be referred to as 'third party appeal', both for the sake of convenience and clarity.

3.Captioned main 'writ petition' ('W.P' for the sake of brevity) has been filed by a designated Senior Advocate / Senior member of the Bar inter-alia seeking a direction to 'Registrar General' ('RG' for the sake of brevity) of 'Madras High Court' ['MHC' for the sake of brevity] and Registrar Administration of MHC to engage experts in conservation, architecture and town planning to frame a comprehensive master plan for future development of the precincts of MHC. When this WP was



W.A.Nos.2401 of 2023 and 2570 of 2024,
W.P.No.13881 of 2024

listed in the admission board on 21.05.2024, a Hon'ble Division Bench
of this court made the following order:

'WP.No.13881/2024 & WMP.No.15054/2024

G.R.SWAMINATHAN, J.,

AND

P.B.BALAJI, J.

[Order of the Court was made by G.R.SWAMINATHAN, J.,]

(1) Heard Mr.A.Yogeshwaran, learned counsel for the petitioner ; Mr..P.S.Raman, learned Advocate General appearing for the 1 st respondent and Mr.Ar.L.Sundaresan, learned Senior Counsel assisted by Mr.B.Vijay, learned Standing Counsel appearing for the 2nd respondent.

(2)The petitioner is a practising Senior Counsel. He has filed this writ petition for the following relief :-

Directing the respondents to forthwith engage experts in conservation, architecture and town planning to frame a comprehensive master plan for the future development of the precincts of our High Court and refrain from erecting any structures including the proposed 5 storey bulding in the law college campus inside the High Court premises until the preparation of the master plan.

(3)He has also filed a miscellaneous petition for restraining the respondents from conducting the foundation stone laying ceremony for the proposed five storey building in the law college campus inside the High Court premises on 22.05.2024 or any other date pending disposal of the present writ petition.



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(4)The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition.

(5)The learned Advocate General produced a copy of the Minutes of the Meeting of the Hon'ble Building Committee, High Court of Madras, held yesterday [20.05.2024] at 3.00 p.m. The same is extracted hereunder:-

"The G.O. for the construction of the 5 storeyed building was issued on 17.11.2023. All the arrangements for the foundation stone laying function on 22.05.2024, including despatch of invitations, have been completed. The representation dated 16.05.2024 from Mr.N.L.Rajah, Senior Advocate, was received by the Registry in the afternoon of 17.05.2024 and the representation dated 19.05.2024 from Mr.T.Mohan, Senior Advocate was received on 19.05.2024.

The Committee considered the representations made by Mr.N.L.Rajah and Mr.T.Mohan, Senior Advocates. The Committee also perused the report dated 18.05.2024 from the Engineer in Chief, Public Works Department. The Committee is of the opinion that still more views of the experts should be solicited, before taking a final decision.

The decision on the objections raised in the above representations, will be taken after the



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W.A.Nos.2401 of 2023 and 2570 of 2024,
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receipt of the further views from experts and competent authorities. The construction activity near the old Law College Building will be carried out, after a final decision is taken by the Committee in the next Meeting."

(6) The aforesaid decision taken by the Hon'ble Building Committee addresses the immediate concerns of the writ petitioner.

(7) We are confident that the respondents will follow the mandate prescribed under Section 58 of the Tamil Nadu Town and Country Planning Act, 1971 and that they will bear in mind the need to preserve the aesthetic features of the High Court Campus. We are equally sure that the proposed construction will not in any way endanger the structural stability of the Law College buildings.

(8) We originally intended to close the writ petition by recording the aforesaid stand of the Hon'ble Building Committee. The petitioner has raised yet another contention. According to him, in the High Court campus, there exist ancient monuments in the form of tombs and that the proposed construction is within the prohibited distance.

(9) The learned Advocate General points out that the said tombs have been ordered to be relocated vide order dated 27.06.2023 made in WP.No.32163 of 2022. It is seen that the petitioner herein has filed a third party writ appeal in WA.Sr.No.94188 of 2023. He has also filed a Leave Petition in CMP.No.18417/2023. The Archaeological Survey of India



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has also filed a writ appeal in WA.No.2401/2023.

(10)Hence, we direct the Registry to list this writ petition along with the aforesaid writ appeals.

(11)As rightly pointed out by the learned Advocate General appearing for the 1st respondent, for conducting the Foundation Stone Laying ceremony, no formal permission from any authority is required. The said function can very well go on as scheduled.

[G.R.S.,J] [P.B.B.,J]

21.05.2024

AP/rka

Internet : Yes/No

Index : Yes /No '

4. Thereafter, captioned W.As and main W.P were tagged and assigned to this Bench by the then Hon'ble Acting Chief Justice in and by order dated 29.07.2024 being order made on the administrative side in his capacity as Hon'ble Master of the Roster. Thereafter, when captioned matters were listed before this Bench for the first time, the proceedings / orders made in the first listing on 01.08.2024 in W.P.No.13881 of 2024 and W.A.No.2401 of 2023 along with miscellaneous petitions thereat is as follows:



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W.P.No.13881 of 2024

W.P.No.13881 of 2024
& W.M.P.No.15054 of 2024 in W.P.No.13881 of 2024
& W.A.No.2401 of 2023
& C.M.P.No.20153 of 2023 in W.A.No.2401 of 2023

W.P.No.13881 of 2024
&
W.M.P.No.15054 of 2024 in W.P.No.13881 of 2024
& W.A.No.2401 of 2023
& C.M.P.No.20153 of 2023 in W.A.No.2401 of 2023

M.SUNDAR.J.,
and
N.SATHISH KUMAR, J.,

(Order of the Court was made by M.SUNDAR.J.,)

Captioned W.P.No.13881 of 2024 and W.A.No.2401 of 2023 have been tagged and have been assigned to this Bench by way of an order made by Hon'ble Acting Chief Justice on the Administrative side on 29.07.2024.

2. When captioned matters were taken up today, the following disclosures were made and it was left open to the counsel to articulate objection/s or reservation/s, if any with regard to this Bench hearing the captioned matters. The disclosures are as follows:

i) One of us (M.SUNDAR.J.,) is an Alumini of erstwhile The Madras Law College. To put it differently, the Madras Law College is *Alma mater* for one of us

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W.A.Nos.2401 of 2023 and 2570 of 2024,
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W.P.No.13881 of 2024
& W.M.P.No.15054 of 2024 in W.P.No.13881 of 2024
& W.A.No.2401 of 2023
& C.M.P.No.20153 of 2023 in W.A.No.2401 of 2023

(M.SUNDAR.J.,);

ii) Writ petitioner and third party leave petitioner
(Mr.T.Mohan, Senior Advocate) and one of us
(M.SUNDAR.J.,) were class fellows in erstwhile The Madras
Law College;

iii) One of us (M.SUNDAR.J.,) is a member of the
Heritage Committee on the Administrative side.

3. In response to the above, all the learned counsel before us
i.e., Mr.Yogeshwaran, learned counsel for writ petitioner, Mr.R.Rajesh
Vivekananthan, learned Deputy Solicitor General of India for State,
Mr.B.Vijay, learned Standing counsel for Registry of Madras High
Court, Mr.K.R.Arun Shabari, learned counsel for petitioner in third party
leave petition (CMP) and Mr.Sivashanmugam, learned counsel for writ
petitioner before Hon'ble single Judge (R1 in captioned WA) submitted
in one voice in unison that they have no objection and they filed a joint
memo.

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W.P.No.13881 of 2024
& W.M.P.No.15054 of 2024 in W.P.No.13881 of 2024
& W.A.No.2401 of 2023
& C.M.P.No.20153 of 2023 in W.A.No.2401 of 2023

4. Before we record the Joint Memo, it is deemed appropriate to also record that learned counsel for Madras High Court Registry brought to our notice that Heritage Committee in its meeting held on 26.06.2024 vide subject No.6 had noticed captioned W.P.No.13881 of 2024 and made a resolution saying that judicial order has to be awaited. In other words, the Heritage Committee has shown deference to the captioned matters being heard on the judicial side. Subject No.6 and the resolution thereat in the Heritage Committee meeting held on 26.06.2024 is as follows:

'Subject No.6: R.O.C.No.119933-A/2022/D1

Sub: Buildings – High Court Madras – Letter from Mr.N.L.Rajah and Mr.T.Mohan, Senior Advocates, High Court, Madras, objecting to the construction of five storey building, in Old law College campus inside the Madras High Court premises – Hon'ble Building Committee resolved to carry out the construction activity, after taking a final decision in the next meeting – W.P.No.13881 of 2024 filed before the Madras High Court to refrain from enacting any structures including the proposed five storied building in the law college campus inside the Madras High Court premises – Order dated 21.05.2024 of the Hon'ble Vacation Court- Submitted- Orders awaited – Regarding.

RESOLUTION

The Committee will await the judicial order, as the matter is now sub judice before the Hon'ble First bench of this Court in W.P.No.13881 of 2024. Hence, deferred.'



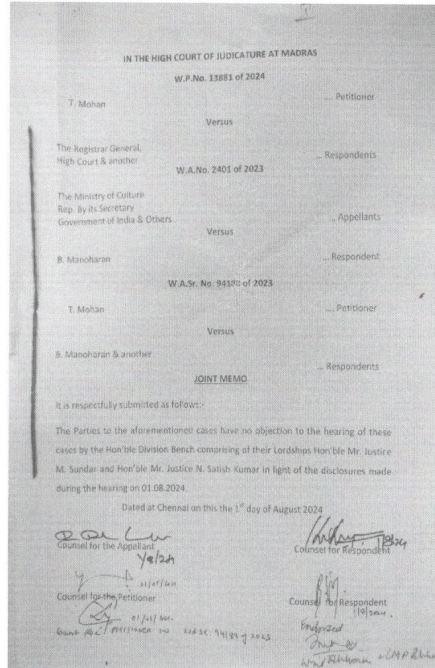
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W.P.No.13881 of 2024
& W.M.P.No.15054 of 2024 in W.P.No.13881 of 2024
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& C.M.P.No.20153 of 2023 in W.A.No.2401 of 2023

5. In the light of narrative thus far, after noticing that the Heritage Committee has simply made it clear that it would await the outcome on the judicial side, we deem it appropriate to scan and reproduce the aforementioned joint memo. We do so and the scanned reproduction is as follows:



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W.A.Nos.2401 of 2023 and 2570 of 2024,
W.P.No.13881 of 2024

Clean typed extract of the above scanned portion is as follows:

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**IN THE HIGH COURT OF JUDICATURE AT MADRAS
W.P.No.13881 of 2024**

T.Mohan

.... Petitioner

Versus

The Registrar General,
High Court & another

... Respondents

W.A.No.2401 of 2023

The Ministry of Culture
Rep. By its Secretary
Government of India & Others

... Appellants

Versus

B.Manoharan

... Respondent

W.A.Sr.No.94188 of 2023

T.Mohan

.... Petitioner

Versus

B.Manoharan & another

... Respondents

JOINT MEMO

It is respectfully submitted as follows:-

The Parties to the aforementioned cases have no objection to the hearing of these cases by the Hon'ble Division Bench comprising of their Lordships Hon'ble Mr.Justice M.Sundar and Hon'ble Mr.Justice N.Satish Kumar in light of the disclosures made during the hearing on 01.08.2024.

Dated at Chennai on this the 1st day of August 2024

Sd/-
Counsel for the Appellant

Sd/-
Counsel for Respondent

Sd/-
Counsel for the Petitioner

Sd/-
Counsel for Respondent

Sd/-
COUNSEL FOR PETITIONER IN WA SR.94188 of 2023

Endorsed
Sd/-
Writ Petitioner & MP Petitioner

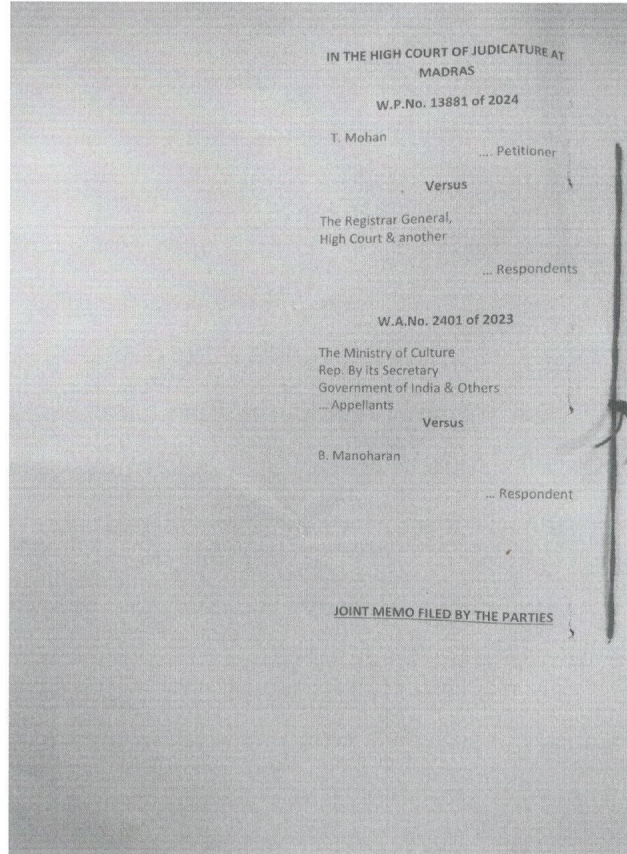


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W.P.No.13881 of 2024
& W.M.P.No.15054 of 2024 in W.P.No.13881 of 2024
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& C.M.P.No.20153 of 2023 in W.A.No.2401 of 2023



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W.A.Nos.2401 of 2023 and 2570 of 2024,
W.P.No.13881 of 2024

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**IN THE HIGH COURT OF JUDICATURE AT
MADRAS**

W.P.No.13881 of 2024

T.Mohan

.... Petitioner

Versus

The Registrar General,
High Court & another

... Respondents

W.A.No.2401 of 2023

The Ministry of Culture
Rep. By its Secretary
Government of India & Others
... Appellants

Versus

B.Manoharan

... Respondent

JOINT MEMO FILED BY THE PARTIES



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W.A.Nos.2401 of 2023 and 2570 of 2024,
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W.P.No.13881 of 2024
& W.M.P.No.15054 of 2024 in W.P.No.13881 of 2024
& W.A.No.2401 of 2023
& C.M.P.No.20153 of 2023 in W.A.No.2401 of 2023

6. All the learned counsel before us i.e., Mr.Yogeshwaran, learned counsel for writ petitioner, Mr.R.Rajesh Vivekananthan, learned Deputy Solicitor General of India for State, Mr.B.Vijay, learned Standing counsel for Registry of Madras High Court, Mr.K.R.Arun Shabari, learned counsel for petitioner in third party leave CMP and Mr.Sivashanmugam, learned counsel for writ petitioner before Hon'ble single Judge {R1 in captioned WA}, submitted in unison in one voice that they have no objection and went on to add that they are more than willing to have this matter heard out by this Special Bench. To be noted, writ petitioner Mr.T.Mohan, Senior Advocate was present in Court and he also endorsed this common submission and aforementioned joint memo.

7. In the light of the narrative thus far, we took up C.M.P.No.18417 of 2023 in W.A (SR) No.94188 of 2023 (third party leave) and a separate order has been made acceding to the prayer thereat.

8. As regards the captioned CMP, Hon'ble predecessor Bench i.e., vacation Bench has made proceedings/orders on 21.05.2024 and the same reads as follows:

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W.P.No.13881 of 2024
& W.M.P.No.15054 of 2024 in W.P.No.13881 of 2024
& W.A.No.2401 of 2023
& C.M.P.No.20153 of 2023 in W.A.No.2401 of 2023



WP.No.13881/2024

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WP.No.13881/2024 & WMP.No.15054/2024

G.R.SWAMINATHAN, J.
AND
P.B.BALAJI, J.

[Order of the Court was made by G.R.SWAMINATHAN, J.]

(1) Heard Mr.A.Yogeshwaran, learned counsel for the petitioner ;
Mr.P.S.Raman, learned Advocate General appearing for the 1st
respondent and Mr.Ar.L.Sundaresan, learned Senior Counsel assisted by
Mr.B.Vijay, learned Standing Counsel appearing for the 2nd respondent.

(2) The petitioner is a practising Senior Counsel. He has filed this writ
petition for the following relief :-

Directing the respondents to forthwith engage experts in conservation,
architecture and town planning to frame a comprehensive master plan
for the future development of the precincts of our High Court and refrain
from erecting any structures including the proposed 5 storey building in
the law college campus inside the High Court premises until the
preparation of the master plan.

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W.A.Nos.2401 of 2023 and 2570 of 2024,
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WP.No.13881/2024 & WMP.No.15054/2024

G.R.SWAMINATHAN, J.,
AND
P.B.BALAJI, J.

[Order of the Court was made by G.R.SWAMINATHAN, J.,]

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respondent and Mr.Ar.L.Sundaresan, learned Senior Counsel
assisted by Mr.B.Vijay, learned Standing Counsel appearing for the
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(2) The petitioner is a practising Senior Counsel. He has filed this
writ petition for the following relief :-

Directing the respondents to forthwith engage experts in
conservation, architecture and town planning to frame a
comprehensive master plan for the future development of the
precincts of our High Court and refrain from erecting any structures
including the proposed 5 storey building in the law college campus
inside the High Court premises until the preparation of the master
plan.



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& C.M.P.No.20153 of 2023 in W.A.No.2401 of 2023



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W.P.No.13881/2024

(3)He has also filed a miscellaneous petition for restraining the respondents from conducting the foundation stone laying ceremony for the proposed five storey building in the law college campus inside the High Court premises on 22.05.2024 or any other date pending disposal of the present writ petition.

(4)The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition.

(5)The learned Advocate General produced a copy of the Minutes of the Meeting of the Hon'ble Building Committee, High Court of Madras, held yesterday [20.05.2024] at 3.00 p.m. The same is extracted hereunder:-

"The G.O. for the construction of the 5 storeyed building was issued on 17.11.2023. All the arrangements for the foundation stone laying function on 22.05.2024, including despatch of invitations, have been completed. The representation dated 16.05.2024

ps://www.mhc.tn.gov.in/judis

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W.A.Nos.2401 of 2023 and 2570 of 2024,
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WP.No.13881/2024

from Mr.N.L.Rajah, Senior Advocate, was received by the Registry in the afternoon of 17.05.2024 and the representation dated 19.05.2024 from Mr.T.Mohan, Senior Advocate was received on 19.05.2024.

The Committee considered the representations made by Mr.N.L.Rajah and Mr.T.Mohan, Senior Advocates. The Committee also perused the report dated 18.05.2024 from the Engineer in Chief, Public Works Department. The Committee is of the opinion that still more views of the experts should be solicited, before taking a final decision.

The decision on the objections raised in the above representations, will be taken after the receipt of the further views from experts and competent authorities. The construction activity near the old Law College Building will be carried out, after a final decision is taken by the Committee in the next Meeting."

- (6) The aforesaid decision taken by the Hon'ble Building Committee addresses the immediate concerns of the writ petitioner.

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from Mr.N.L.Rajah, Senior Advocate, was received by the Registry in the afternoon of 17.05.2024 and the representation dated 19.05.2024 from Mr.T.Mohan, Senior Advocate was received on 19.05.2024.

The Committee considered the representations made by Mr.N.L.Rajah and Mr.T.Mohan, Senior Advocates. The Committee also perused the report dated 18.05.2024 from the Engineer in Chief, Public Works Department. The Committee is of the opinion that still more views of the experts should be solicited, before taking a final decision.

The decision on the objections raised in the above representations, will be taken after the receipt of the further views from experts and competent authorities. The construction activity near the old Law College Building will be carried out, after a final decision is taken by the Committee in the next Meeting."

(6) The aforesaid decision taken by the Hon'ble Building Committee addresses the immediate concerns of the writ petitioner.



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W.A.Nos.2401 of 2023 and 2570 of 2024,
W.P.No.13881 of 2024

W.P.No.13881 of 2024
& W.M.P.No.15054 of 2024 in W.P.No.13881 of 2024
& W.A.No.2401 of 2023
& C.M.P.No.20153 of 2023 in W.A.No.2401 of 2023



WP.No.13881/2024

(7) We are confident that the respondents will follow the mandate prescribed under Section 58 of the Tamil Nadu Town and Country Planning Act, 1971 and that they will bear in mind the need to preserve the aesthetic features of the High Court Campus. We are equally sure that the proposed construction will not in any way endanger the structural stability of the Law College buildings.

(8) We originally intended to close the writ petition by recording the aforesaid stand of the Hon'ble Building Committee. The petitioner has raised yet another contention. According to him, in the High Court campus, there exist ancient monuments in the form of tombs and that the proposed construction is within the prohibited distance.

(9) The learned Advocate General points out that the said tombs have been ordered to be relocated vide order dated 27.06.2023 made in WP.No.32163 of 2022. It is seen that the petitioner herein has filed a third party writ appeal in WA.Sr.No.94188 of 2023. He has also filed a

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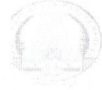


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W.P.No.13881 of 2024
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WP.No.13881/2024

Leave Petition in CMP.No.18417/2023. The Archaeological Survey of
India has also filed a writ appeal in WA.No.2401/2023.

(10)Hence, we direct the Registry to list this writ petition along with the
aforesaid writ appeals.

(11)As rightly pointed out by the learned Advocate General appearing for
the 1st respondent, for conducting the Foundation Stone Laying
ceremony, no formal permission from any authority is required. The
said function can very well go on as scheduled.

[G.R.S.,J] [P.B.B.,J]
21.05.2024

AP/ika

Internet : Yes/No
Index : Yes /No

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21.05.2024

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W.P.No.13881 of 2024
& W.M.P.No.15054 of 2024 in W.P.No.13881 of 2024
& W.A.No.2401 of 2023
& C.M.P.No.20153 of 2023 in W.A.No.2401 of 2023

9. Adverting to paragraph 5 of aforementioned order, Mr.B.Vijay, learned Standing counsel appearing for Madras High Court Registry submitted that the Hon'ble Building Committee had not convened i.e., had not held a meeting or met after the meeting on 20.05.2024. Learned counsel made this submission, on instructions, from the Officers of the Registry present in Court and learned counsel, on instructions, further submitted that in any meeting of the Hon'ble Building Committee subject matter of the captioned writ appeal and WP will not be tabled as an agenda much less taken up / make any resolution and that the Registry and the Hon'ble Committee would await the outcome of the captioned matter and that this is in the same spirit qua Heritage Committee which has yielded and shown deference to instant judicial proceedings. This fair submission is recorded.

10. As regards the next listing, all the learned counsel before us submitted that they prefer a physical hearing and therefore, this Special Bench has agreed to reconvene in the Principal Seat on 23.08.2024 (Friday) at quarter past two in the afternoon.

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W.P.No.13881 of 2024
& W.M.P.No.15054 of 2024 in W.P.No.13881 of 2024
& W.A.No.2401 of 2023
& C.M.P.No.20153 of 2023 in W.A.No.2401 of 2023

11. All pleadings to be completed well before next listing and copies to be exchanged in advance as between the counsel in such a manner that the next listing is a productive hearing.

12. List on 23.08.2024 at 02.15pm.


[M.S.J.,] 
[N.S.K.J.,]

01.08.2024
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5.The aforementioned 01.08.2024 proceedings shall now be construed and treated as a integral part and parcel of this common judgment.

6.The factual matrix in a nutshell, i.e., short facts shorn of elaboration will suffice to appreciate this order. The Madras Law College (now Dr.Ambedkar Government Law College), Chennai and MHC were contiguous campuses and for all practical purposes one campus; that in Madras Law College [MLC] campus, a tomb of a young three years old David Yale/Jacca David Yale, son of Mr.Elihu Yale, the then Governor of Madras from 1687 to 1692 and one Mr.Joseph Hynmer, who was a friend of Mr.Elihu Yale stands; that after the death of Mr.Joseph Hynmer in 1680, Mr.Elihu Yale married his friend Joseph Hynmer's widow Catherine Elford and Jacca David Yale was born to Elihu Yale and Catherine Elford; that Elihu Yale continued as Governor till 1692 and left for England in 1699; that Elihu Yale made generous donation to Connecticut College in U.S.A. which subsequently became Yale University; that this Tomb was declared as 'Protected monument' vide a notification made in the Fort St. George Gazette, being



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Notification No.34, dated 20.01.1921; that there are some restrictions regarding construction within 100 meters from this monument; that a Metro Rail Station was built abutting the compound of MLC on the Western Side; that tunneling the Metro Rail station weakened and caused damage to MLC building which is undisputedly a heritage building; that thereafter, the MLC building was repaired and work was done for converting MLC into Court halls for MHC [to be noted, in the interregnum, MLC had been shifted]; that MHC proposed to put up a 5 storeyed building for housing Registry offices, etc., of MHC on the Western part of MLC campus; that writ petitioner in W.P.No.13881 of 2024 (hereinafter 'Master plan WP' for convenience) has filed the writ petition saying a master plan is imperative for organized development; that prior to this development, another member of the Bar on 28.11.2022 had filed W.P.No.32163 of 2022 ('Monument W.P.' for convenience) before a Single Judge with a prayer to declare that the Tomb is not an ancient monument (there is an allusion about this supra) and after full contest, the same came to be allowed in and by the impugned order dated 27.06.2023, about which also there is allusion elsewhere in this order; that said appeal and third party appeal were filed against this



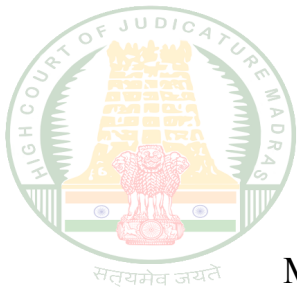
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order of Hon'ble Single Judge (to be noted, third party appeal was filed by same Senior Advocate who filed Master plan WP); that all three main matters together with miscellaneous petitions thereat were tagged as would be evident from the trajectory captured supra and that the tagged three matters were heard out in full and this common judgment is being made now.

7.This Court is of the considered view that both captioned writ appeals deserve to be dismissed, the order of Hon'ble Single Judge, i.e., impugned order deserves to be sustained and the reasons are set out infra. To be noted, reasons are set out infra by way of a adumbration by dealing with each point one after the other. In setting out each point, the discussion on the same and the dispositive reasoning are also set out. This adumbration is as follows:

(a)The notification being Notification No.34, dated 20.01.1921 made by the then Governor in Council declares the monument in question as 'protected monument' vide section 3(1) of 'the Ancient Monuments Preservation Act, 1904 (VII of 1904)' [hereinafter 'said 1904 Act' for the sake of brevity]. In and by this notification, seven monuments in



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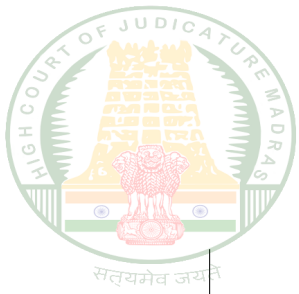
Madras were declared as protected monuments and the notification as placed before us is as follows:

NOTIFICATION

Under section 3, sub-section (1) of the Ancient Monuments Preservation Act, 1904 (VII of 1904), the Governor in Council declares the ancient monuments described in the annexed schedule to be protected monuments within the meaning of the said Act.

SCHEDULE

<i>Name of district, taluk and village.</i>	<i>Description with survey or paimash number.</i>	<i>Name of owner.</i>	<i>Boundaries.</i>	<i>Extent.</i>
Madras, Tondiarpet	Old Town Wall R.S.No.9-3 (dry), Tondiarpet.	Govern-ment	North, R.S.No.9-3 part Tondiarpat; east, R.S.No.15 Tondiarpet; south, R.S.No.2726 Georgetown, west R. S. No.8 Tondiarpet	O. Gr. S. Er. 1 14 435
Madras, Muthialpet	Cornwallis Memorial near the Custom House R.S.No.4210, George Town	Do.	North R.S. No.4210, part, east, R.S. No.4211, south, R.S. No 4210 part; west R.S. No.4210 part	0 0 608
Madras, Tondiarpet	Obelisk R.S.No.1697 Tondiarpet	Do.	North, R.S.No.1697-2; east, R.S. No.24; south and west R.S.No.1697-2.	0 0 54
Madras, Muthialpet	Tomb of Elihu Yale and Joseph Hymnners in the compound of Law College, Georgetown, R.S.No.11712 of Georgetown	Do.	North, east, south and west, R.S.No.11712 part	0 0 812
Madras, Tondiarpet	Pillar R.S.No.1816 of Tondiarpet	Do.	North, east, south and west, R.S.No.1816 part	0 0 12
Do.	Pillar, R.S.No.1793	Do.	North, east, south and	0 0 12

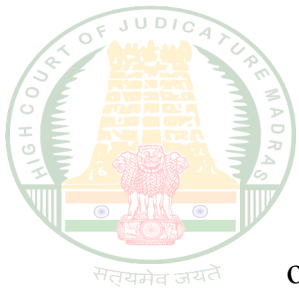


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	of Tondiarpet		west, R.S.No.1793 part	
Do.	Slab, R.S.No.1764, Tondiarpet	Do.	North, east, south and west, R.S.No.1764 part	0 0 12

(b)There is no disputation or contestation that fourth monument (4th in Y-axis) is what we are concerned with. The notification clearly talks about tomb of Elihu Yale and Joseph Hynmers. There is also no disputation that what we are concerned with is the place where Elihu Yale's three years old son Jacca David Yale/David Yale and Elihu Yale's friend Joseph Hynmer's tomb stands but the notification talks about the tomb of Elihu Yale. It is more important to note that there is no disputation or contestation between the parties before us that Elihu Yale was not buried in the place we are concerned with and that Elihu Yale after serving as Governor till 1692 left for England in 1699 and died in England a little later. In this regard, learned Deputy Solicitor very fairly submitted that a error has occurred qua the notification. Likewise, there is no disputation that Elihu Yale has not been buried in MLC campus (to be noted, he was not buried in India at all) and that



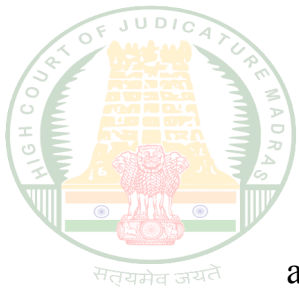
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only his 3 year old son Jacca David Yale and Elihu Yale's friend Joseph Hynmer have been buried in MLC campus. Therefore, there is no difficulty in coming to the conclusion that there is no notification qua any monument for Elihu Yale. Absent notification for Elihu Yale, said monument is far from historical interest to be a protected monument. To be noted, there is no material to demonstrate archaeological or artistic interest about which there is allusion elsewhere in this judgment. Therefore, the impugned order of learned Single Judge allowing the writ petition and directing relocation of the tomb to a appropriate place does not call for any interference;

(c)The submission of learned Deputy Solicitor that there is a error in 1921 notification is very fair. However, what is of significance is no steps have been taken until this day (for over 104 years) to issue any errata or corrigendum. As a sequitur to the previous point, the argument that 1921 notification (notification No.34 dated 20.01.1921) has not been assailed or set aside does not hold water. In this regard, this Court reminds itself of what has come to stay in legal parlance



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as ***Mohinder Singh Gill*** principle [***Mohinder Singh Gill Vs.***

The Chief Election Commissioner reported in (1978) 1 SCC

405]. ***Mohinder Singh Gill*** principle is that action has to be

judged by reasons while making an order excluding

supplementary reasons in the shape of affidavits. In this regard,

observations made by Bose, J, in ***Gordhandas Bhanji*** being

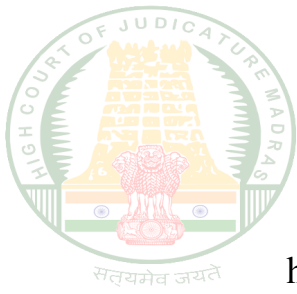
Commissioner of Police, Bombay Vs. Gordhandas Bhanji

reported in ***AIR 1952 SC 16*** was reiterated. In ***Gordhandas***

Bhanji case, Bose, J. wrote as follows:

'Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.'

Therefore, the notification which was made 104 years ago cannot be altered and read as Tomb of Elihu Yale by relying on the affidavit filed in the hearing much less arguments in this



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hearing;

(d)Myriad arguments were made regarding the contribution of Elihu Yale to the Connecticut College in U.S.A., which is now Yale University but there is absolutely no material to demonstrate any contribution by Elihu Yale to India and there is also no material to demonstrate that he served this Country. On the contrary, the material only demonstrates that Elihu Yale worked for East India Company, engaged in Spice, muslin, silk and gold trade for East India Company and for himself. Therefore, on a demurrer, there is no material to justify a Tomb for Elihu Yale. This is on a demurrer as it is nobody's case that Elihu Yale was buried in MLC Campus.

(e)Archaeological Survey of India as well as State having fairly accepted that there is a error in the notification, have not taken any steps to place any material before this Court regarding any archaeological and/or artistic interest qua tomb. In this regard, the definition of 'ancient monument' vide section 2(1) of said 1904 Act is relevant an the same reads as follows:



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'2.Definitions.--In this Act, unless there is anything repugnant in the subject or context,--

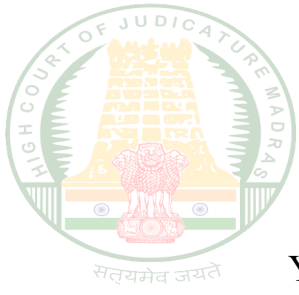
(1)"ancient monument" means any structure, erection or monument or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest, or any remains thereof, and includes--

(a)the site of an ancient monument;

(b)such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument; and

(c)the means of access to and convenient inspection of an ancient monument;'

(f)A careful perusal of the aforementioned definition brings to light that for said monument to qualify as 'ancient monument', it should be of (a) historical, (b) archaeological or (c) artistic interest. No material has been placed before this Court much less has any argument been advanced to say that said monument is of historical, archaeological or artistic interest except saying that Elihu



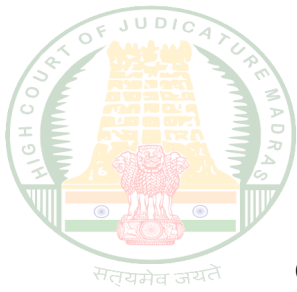
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Yale contributed generously to the Connecticut college in U.S.A., which subsequently became Yale University and Yale University established a department of Tamil Studies. Yale University established department of Tamil Studies only in 2004 and therefore, the tomb built some time between 1684 and 1688 is of no significance. These are considerations on a demurrer, as it is nobody's case that this is the tomb of Elihu Yale. On the contrary, it is the tomb of Elihu Yale's three years old child and Elihu Yale's good friend Joseph Hynmer and as regards Joseph Hynmer, even this contribution to Yale University point does not apply.

(g)As regards case laws, some case laws were placed before us by learned Deputy Solicitor. Before advertng to these case laws, this Court reminded itself of celebrated ***Padma Sundara Rao Vs. State of Tamil Nadu*** reported in ***(2002) 3 SCC 533*** as regards the manner in which precedents have to be cited and how a citation should be relied on. This Court is of the respectful view that ***Padma Sundara Rao*** is declaration of law as it was rendered by a



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Constitution Bench. In ***Padma Sundara Rao***, the facts of the case is that a notification issued under Section 6 of the Land Acquisition Act, 1894 was assailed in Madras High Court and the High Court relying on N.Narasimhaiah case reported in ***(1996) 3 SCC 88*** held that the same was validly issued. The matter was carried to Hon'ble Supreme Court on the question of law as to whether after quashing of a notification under section 6, a fresh period of one year is available to the State Government to issue another notification under section 6. It is in this context, i.e., while deciding this legal question, a Constitution Bench of Hon'ble Supreme Court declared the law as regards how courts should place reliance on case laws / precedents. The most relevant paragraph in ***Padma Sundara Rao*** is paragraph 9 and the same reads as follows :

'9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British*



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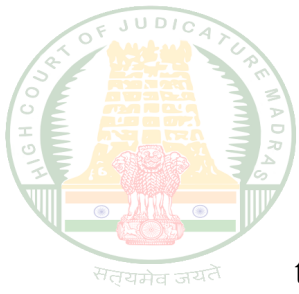


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Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub *nom* *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

(g)(i) We now proceed to deal with the case laws which were placed before us and an adumbration in this regard is as follows:

(g)(ii) Learned Deputy Solicitor General has relied on various decisions of Hon'ble Supreme Court and a decision of Hon'ble Division Bench of this Court in support of his submissions. A decision of Hon'ble Supreme Court in ***K.Guruprasad Rao Vs. State of Karnataka*** reported in ***(2013) 8 SCC 418*** was relied on before Hon'ble Single Judge to show as to how a legal regime in India has evolved considering the necessity qua preserving and protecting the ancient monuments and the enactment of said 1904 Act. The facts of this case is that Jambunatheswara Temple or Jambhunatha Temple in State of Karnataka was declared as protected monument by the Government of Karnataka and

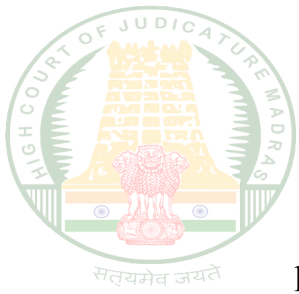


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the State Government had declared an area within the radius of 200 metres from the periphery and precincts of Jambhunatha Temple as 'safe zone' where no mining activity could be conducted. In the year 1952, a mining lease was granted to one Mr.R.Gangadharappa near the temple for extraction of iron ore for a period of 30 years and subsequently, the lease was renewed for another 30 years. The Director of Ancient monuments inspected the temple in May 2003 and found that the mining activity was causing damage to the structures of the temple and therefore, he wrote a letter to the Assistant Commissioner, Endowments to take action for stopping the mining activities within the radius of one kilometre from the temple. While so, the Government of India accorded permission to the 4th respondent therein to increase the production of iron ore. The appellant then filed a writ petition before the Karnataka High Court in public interest seeking for cancellation of mining lease and to stop the mining activity within one kilometre from the temple. As the High Court dismissed the writ



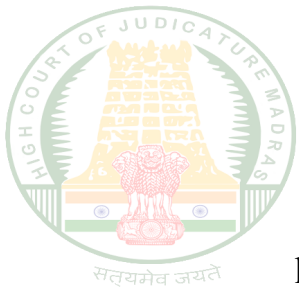
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petition, the appellant approached Hon'ble Supreme Court. It is in this context, Hon'ble Supreme Court has dealt with the case extensively and considered the need to preserve and protect the ancient monuments for the benefit of future generations while carrying out development activities.

(g)(iii)Learned Deputy Solicitor General relied on ***Joseph Pothen*** case being ***Joseph Pothen Vs. State of Kerala*** reported in ***AIR 1965 SC 1514***. The factual matrix in this case is that the Government of Kerala issued a notification dated 03.10.1963 declaring the wall in question to be a protected monument. The petitioner filed writ petition under Article 32 of the Constitution of India to quash the same. It was the case of the petitioner that the petitioner purchased a property measuring 2 acres and 57 cents in Survey Nos.646 to 650 consisting of land, trees, buildings, surrounding well on all sides, gates and all appurtenants, etc., belonging to His Highness the Maharaja of Travancore, by way of a sale dated dated 07.01.1959. The petitioner states that the walls in question in said survey numbers belonged to

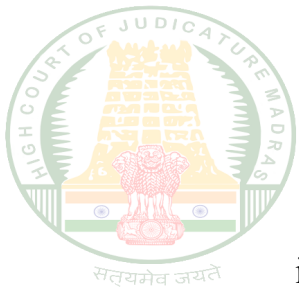


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him. The issue in that case is whether the petitioner has any fundamental right in respect of the wall within the meaning of Article 19(1)(f) of the Constitution. It was the contention of the State that the disputed wall is part of the historic Fort Wall and Sree Padmanabhaswamy Temple is surrounded by the historic Fort wall. Hon'ble Supreme Court had also considered the relevant legislative fields of the Central and State Legislatures vide the entries in the three Lists of the Seventh Schedule to the Constitution. It was noticed that where the Parliament has not declared some of the ancient and historical monuments and archaeological sites and remains to be of any national importance, the State Legislature has exclusive power to make law in respect of ancient and historical monuments and records and both Parliament and State Legislature can make laws subject to the other constitutional provisions in respect of archaeological sites and remains. Hon'ble Supreme Court taking into consideration the legislatures and the expressions 'monument' and 'archeology', came to the conclusion that the

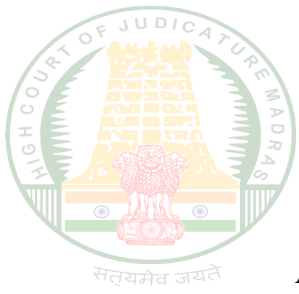


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impugned notification was validly issued.

(g)(iv)The other case law relied on by learned Deputy Solicitor General is ***Rajeev Mankotia Vs. Secretary to the President of India and others*** reported in ***(1997) 10 SCC 441***. In this case, Hon'ble Supreme Court stressed the need to maintain all national monuments under the respective Acts and to ensure that all of them are properly maintained so that the cultural and historical heritage of India and the beauty and grandeur of the monuments, etc., continued to be preserved. Viceregal Lodge at Shimla was subject matter in this case. This building was built with an exquisite Himalayan gray stone and personified the English Renaissance of Elizabethan style of architecture, the beauty and grandeur of the building is unique. Three historical meetings between colonial administration and the Indian leaders took place under the leadership of Mahatma Gandhiji. After independence, it was renamed as 'Rashtrapati Niwas' and Presidents of Bharat Republic stayed as summer resort. Later on, it was handed over to the Indian Institute of



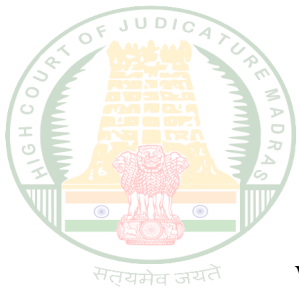
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Advanced Studies. Subsequently, it was decided to convert the building into a tourist hotel while purporting to maintain the main part of the building as a historical resort. It was at this stage, the writ petition was filed before Hon'ble Supreme Court.

(g)(v) Another case law cited was *Union of India Vs. Shree Gajanan Maharaj Sansthan* reported in (2002) 5 SCC 44. This is a case where the respondent which was registered as a charitable trust had filed a writ petition before the Bombay High Court contending that the definition of the term 'industry' in the Industrial Disputes Act, 1947 has been amended vide the Industrial Disputes (Amendment) Act, 1982, whereby the expression 'charitable organisations' had been excluded from the term 'industry'; that the provision which amended the definition of the term 'industry' had not been brought into force and therefore, the respondent filed the writ petition before the High Court. The High Court took the view that it is obligatory for the Central Government to examine whether difficulties as expressed still subsist and



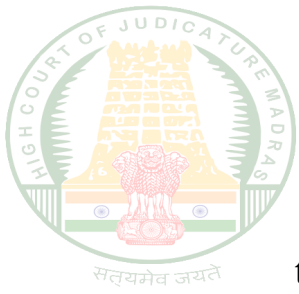
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what steps the Central Government had taken to surmount them and when more than 18 years had elapsed the appellant ought to examine and decide as to when it would be feasible to give effect to the provisions of the amending Act. In this fact setting, it was observed by Hon'ble Supreme Court in this case that no writ of mandamus could be issued directing the Government to consider the question whether the provision should be brought into force and when it can do so, when enforcement of a provision in a statute is left to the discretion of the Government without laying down any objective standards.

(g)(vi) ***S.B.Vohra*** case being ***Union of India Vs. S.B.Vohra*** reported in ***(2004) 2 SCC 150*** was pressed into service qua how far and to what extent a writ in the nature of mandamus should issue directing the Union of India to pay salary to the officers of the High Court in a particular scale of pay and this is the issue in this case. It was held that the High Court should not ordinarily issue a writ of or a writ in the nature of mandamus and ought to refer the matter back to

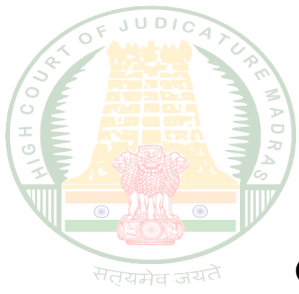


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the Central / State Government with suitable directions pointing out the irrelevant factors which are required to be excluded in taking the decision and the relevant factors which are required to be considered, the statutory duties should be allowed to be performed by the statutory authorities at the first instance. It is trite that ordinarily the court will not exercise the power of statutory authorities and it will at the first instance allow the statutory authorities to perform their own functions and would not usurp the said jurisdiction itself.

(g)(vii)Learned Deputy Solicitor General has also relied on *Archaeological Survey of India Vs. Narender Anand* reported in **(2012) 2 SCC 562**. In this case, Hon'ble Supreme Court has dealt with the enactment of said 1904 Act. The facts in this case is Jantar Mantar, New Delhi is one of the five unique observatories built by Maharaja Jai Singh (II) of Jaipur between 1699 and 1743. The Central Government vide notification dated 4.10.1956 declared Jantar Mantar to be a protected monument. Thereafter, the



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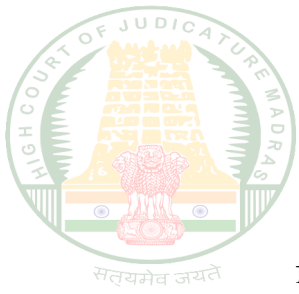


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Central Government vide notification dated 16.06.1992

declared certain areas to be prohibited and regulated areas.

The respondents 1 and 2 who own a plot in the area in issue submitted a building plan for construction of multi storeyed commercial building. After obtaining the sanction, respondents commenced demolition of existing structure and started digging foundation for the new building. The Archaeological Survey of India raised a complaint saying that it is contrary to the notification dated 16.06.1992. The Corporation issued notice to respondents to stop the construction. Challenging the same, respondents initiated court proceedings. Learned Single Judge had granted ex parte injunction and directed respondents to furnish an undertaking that they will raise construction upto the height of 55 ft only. Archaeological Survey of India preferred appeal before Hon'ble Division Bench. After full contest before Hon'ble Division Bench, injunction was vacated and Central Government was directed to review the notification dated 16.06.1992 observing that a provision could be made



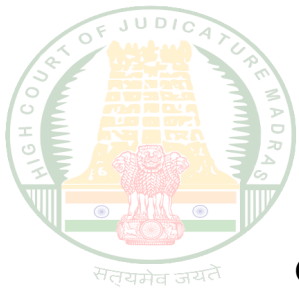
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for relaxation of prohibition on case to case basis considering various factors. Challenging the same, Archaeological Survey of India approached Hon'ble Supreme Court. It is in this context, Hon'ble Supreme Court observed that the notification was issued by the Central Government for implementing the policy enshrined in Article 49 of the Constitution and to preserve and protect the ancient and historical monuments and archaeological sites and remains of national importance and it is not possible to approve the direction issued to the Central Government to review the prohibition contained in the notification. In the name of development and accommodating the need for multi storeyed structures, the High Court could not have issued a mandamus to Central Government to review / reconsider the notification dated 16.06.1992 was the further observation.

(g)(viii)Further, reliance was made qua a decision of Hon'ble Division Bench of this High Court in ***Thomas G.Rathinaraj Vs. Union of India*** reported in ***2013 (3) CTC 505***, where a Public Interest Litigation was filed to declare a

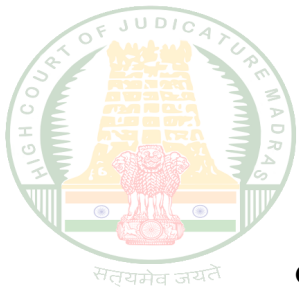


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Church as ancient and heritage monument. It was stated that though the Church is more than 100 years old, there were no sculptures, inscriptions or any unique artistic interest involved. The Commissioner of Archaeology, Government of Tamil Nadu filed a counter stating that the Church need not be protected as ancient heritage monument of historic importance and the Church had undergone repairs, alterations, additions, extensions number of times with modern materials. Hon'ble Division Bench observed that in view of the stand taken by the experts in Archaeological department, directions as sought for in the writ petition cannot be granted and the experts opinion should not be interfered with.

(g)(ix) Another case law being *Uttar Pradesh Public Service Commission through its Chairman Vs. Rahul Singh* reported in (2018) 7 SCC 254 was relied on by learned Deputy Solicitor General qua the point that the judges cannot take on the role of experts in academic matters and Judges must exercise great restraint and should not

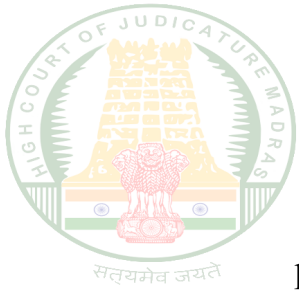


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overstep their jurisdiction to upset the opinion of the expert.

This observation was made by Hon'ble Supreme Court in a case where applications were invited for filling up vacancies in the Upper Subordinate Services in Uttar Pradesh and various selection process were followed. After preliminary examinations, the key answers were published by the Commission and it was contended that some of the key answers were incorrect or that some of the questions had more than one correct answer. Initially, the Commission had constituted two expert committees and after their expert opinion, the key answers were uploaded in the official website. After receiving the objections, the Commission had constituted a committee consisting of 26 members to consider the objections and after the recommendations of this Committee, five questions were deleted and key answers of two questions were changed. Writ petitions were filed by various candidates before the High Court challenging the correctness of key answers for 14 questions. The High Court examined the questions and negatived the prayer of



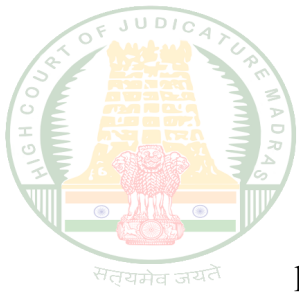
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petitioners in respect of 11 questions and in respect of one question, it had held that the question should be deleted and for another question, it held that there were two correct answers and in respect of another question, it disagreed with the view of the Commission. This was in challenge before Hon'ble Supreme Court. It was in this context, the aforesaid observations were made by Hon'ble Supreme Court.

(g)(x)In ***Sarvepalli Ramaiah Vs. District Collector, Chittoor District*** reported in ***(2019) 4 SCC 500***, Hon'ble Supreme Court held that a judicial review under Article 226 of the Constitution is directed not against the decision but the decision making process, a patent illegality and / or error apparent on the face of the decision which goes to the root of the decision, may vitiate the decision making process. These observations were made in a case where the appellants had obtained ryotwari patta in respect of some lands and appellants had filed a writ petition earlier before the High Court seeking direction to Tahsildar concerned for implementation of the patta granted to him, the said writ



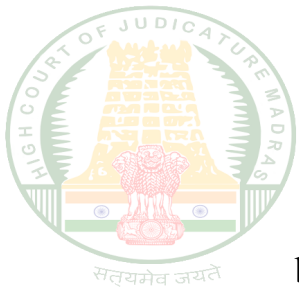
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petition was disposed of directing the authorities to satisfy with reference to relevant records whether patta is genuine or not and if found to be genuine, it should be implemented. Thereafter, the District Collector did not grant approval, instead issued a notification stating that the ryotwari pattas issued are not valid and therefore, the subsequent sale deeds are also not valid. Another writ petition was filed wherein a direction was issued to District Collector to conduct enquiry after affording opportunity to appellants. The District collector after holding enquiry rejected the request of appellants. Challenging the same, a writ petition was filed and the same was dismissed by learned Single Judge and the appeal before the Division Bench was also dismissed affirming the order of learned Single Judge that the land is classified as 'Peddacheruvu Tank' which vests in the Government and cannot be transferred. Challenging this decision, Hon'ble Supreme Court was approached and these observations were made qua such factual matrix.

(g)(xi)A Delhi High Court decision was relied on

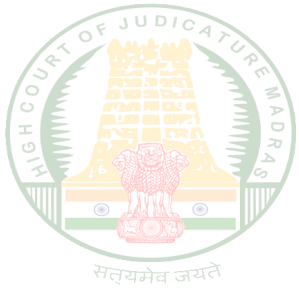


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by learned Deputy Solicitor, i.e., ***Roseline Wilson and others Vs. Union of India*** reported in ***ILR(2007) II Delhi 514***, wherein the case of the petitioners was that the petitioners have perfected title against 5th respondent by adverse possession as they are being in uninterrupted, peaceful and long settled possession of the property in question. They were issued notices under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1958 but no proceedings were conducted. On 30.09.2005, show cause notice was issued by third respondent to about 40 occupants of the Christian Compound purportedly under the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the rules thereunder and reply to show cause notice was not considered favourably and therefore, the petitioners preferred writ petition before Delhi High Court. The Delhi High Court held that a notification issued in the gazette of India is valid and binding till any fresh notification withdrawing/repealing the earlier notification is issued.



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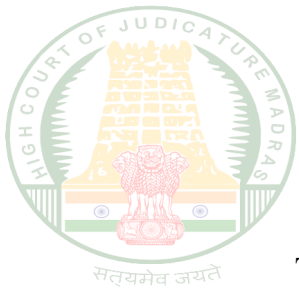
(g)(xii)Learned counsel for appellant in the third party appeal pressed into service two case laws. He relied on ***Rajeev Suri*** case being ***Rajeev Suri Vs. Delhi Development Authority and others*** reported in ***(2022) 11 SCC 1***. The central issue in this case is the decision of Central Government to construct a new Parliament building and the Central Vista Project. In this case, Hon'ble Supreme Court was called upon to undertake a comprehensive and heightened judicial scrutiny regarding the permissibility of the Central Vista project. Several issues such as change in land use, grant of statutory and other permissions, environmental as well as heritage clearances, etc., have been raised. Hon'ble Supreme Court considering the elaborate submissions, set aside the notification of modification/change of land use dated 28.03.2020 in respect of 6 plots in the Central Vista and directions were issued to Heritage Conservation Committee. It had also set aside the environment clearance by the Ministry of Environment and Forests dated 17.06.2020.



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(g)(xiii)Learned counsel also relied on a decision of Hon'ble Supreme Court being *Mohammad Latief Magrey Vs. Union Territory of Jammu and Kashmir and others* [Civil Appeal No.6544 of 2022 dated 12.09.2022]. The facts of this case was that son of the appellant in this case died in an encounter between the police and militants and his body was buried. The appellant filed a writ petition in the High Court seeking direction to respondents to hand over the body of his son who was killed in the encounter. Learned Single Judge allowed the writ petition. Challenging the same, the Union Territory of Jammu and Kashmir preferred Letters Patent Appeal and the same was disposed of by Hon'ble Division Bench, whereby appellants were directed to allow the first respondent and his family members to perform *Fatiha Khawani* (religious rituals / prayers after burial) of deceased and appellants were directed to pay compensation of Rs.5 Lakhs as awarded by the writ court. The direction issued by the learned Single Judge for exhuming the body of the deceased was not approved by the appeal court.



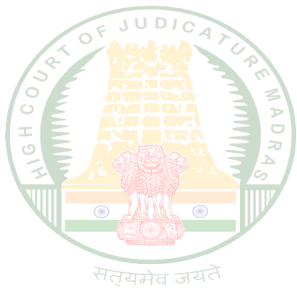
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Therefore, the appellant approached Hon'ble Supreme court.

Hon'ble Supreme Court held that after a body has been buried, it is considered to be in the custody of law and therefore disinterment is not a matter of right and the disturbance or removal of an interred body is subject to the control and direction of the Court. Once buried, a body should not be disturbed. A court will not ordinarily order or permit a body to be disinterred unless there is a strong showing of necessity that disinterment is within the interests of justice. Each case is individually decided, based on its own particular facts and circumstances.

(h)If ***Padma Sundara Rao*** principle is applied, it comes to light that none of the case laws aid the learned Deputy Solicitor and learned counsel for appellant in third party appeal, as the facts of those case laws are not even remotely relatable to the facts of the case on hand and therefore, we have no hesitation in writing that the case laws do not further the case of respective parties as (a) the case laws were rendered in different fact setting and/or (b) propositions are different.



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8.This Court now proceeds to consider the master plan WP and dispose of the same by setting out the reasons infra by way of a adumbration dealing with each point one after the other. The discussion and dispositive reasons on each point are set out infra along with each point.

(a)There is 'Heritage, Museum, Environmental and Portrait Committee for High Court' [Heritage Committee] in the MHC which is constituted by Hon'ble members of Bench, Bar, Public Works Department [PWD], etc., This Heritage Committee was put in place by a administrative order in the year 2006 made by Hon'ble Mr.Justice A.P.Shah (the then Hon'ble Chief Justice of MHC) which reads as follows:

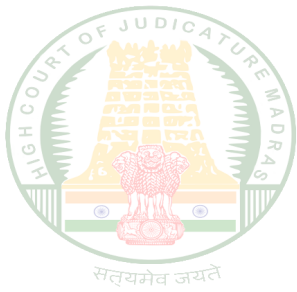
'ORDER

A Committee of the following Hon'ble Judges, Officials and Senior Advocates is hereby constituted as the “*Heritage Committee*”.

XXXXXXX

XXXXXXX

The above Committee is constituted with a view to preserve and protect the aesthetic value of



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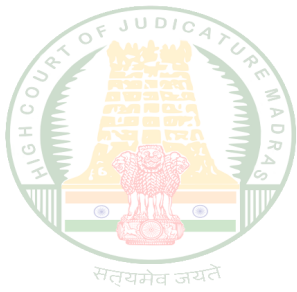
the High Court Buildings at the Principal Seat and other Court buildings within the High Court Campus. Proposals if any for the additional construction, renovation, alteration, etc., shall be forwarded to this Committee for approval. The Committee will suggest measures to be taken for preservation, maintenance and restoration of the aesthetic and heritage value of the buildings. Public Works Department will carry out the necessary repair works in the premises on prior approval of the Committee. The Committee will also take the assistance and help from the experts in the field.

Registry to address the Government for Publication.'

(b) There is categorical averment / ground in the writ affidavit that this Heritage Committee has been completely bypassed. This is vide Ground (H) which reads as follows:

'H. The respondents have failed to see that the Heritage Committee constituted by orders of this Hon'ble Court plays a vital role in decision making and such a committee cannot be bypassed in the decision making process.'

(c) The aforementioned Ground (H) has neither



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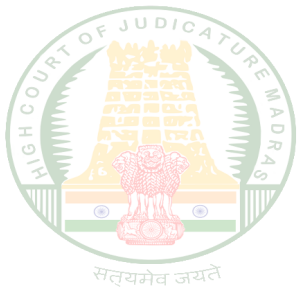
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been denied nor disputed in the counter affidavit. Relevant paragraph in the counter affidavit which deals with Ground (H) is paragraph 24 and the same reads as follows:

'24.With regard to Ground (H), it is submitted that the proposal for construction of G+4 building which is a new building proposal, was approved by the Hon'ble Building Committee as per the procedure which is in vogue and has been in practice.'

(d)The Heritage Committee (remit of which is clear as day light vide 2006 order on administrative side [to be noted, 2006 order has been reproduced supra]) being completely bypassed when there is no disputation that MHC and Madras Law College are heritage buildings by itself is a strong point in favour of the writ petitioner and further obtaining position qua remit of the committee buttresses this point;

(e)In the rejoinder dated 05.09.2024 filed by the writ petitioner in the master plan WP, it has been specifically pointed out that the contention of the

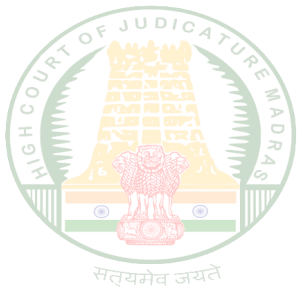


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respondents that the proposed five storeyed building is below the threshold limit specified vide Entry 8(a) and 8(b) of the EIA Notification, 2006 is incorrect. The writ petitioner who is a senior counsel has pointed out in the rejoinder that this below the threshold argument is incorrect as the footprint of the proposed building has been shown as 5820 square metres by adopting segmentation. It has been categorically submitted that segmentation of activities results in a suppression of its true impact and footprint. This has not been disputed. Even in the written submissions, this segmentation argument has not been met as vide paragraph 8 of written submissions of MHC, it has only been repeated that the proposed construction involves built up area of 5823 square metres without meeting the segmentation point. Therefore, this Court has no difficulty in accepting the argument of the writ petitioner that proposed building is not below the threshold limit of EIA notification. The sequitur is, this proposed building also will be revisited and reconsidered in the master plan. Be that as it may, the



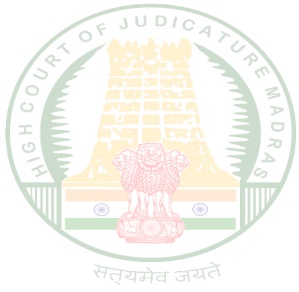
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further assertion of the writ petitioner in the rejoinder that various large buildings constructed in our MHC campus and areas cleared for various developments are beyond the threshold under EIA Notification, 2006 has also not been disputed in the hearing or the written submission which was filed after the rejoinder of writ petitioner. To be noted, rejoinder of writ petitioner is dated 05.09.2024 and written submissions of MHC is dated 20.03.2025. However, as regards buildings already constructed, the same will remain but it is axiomatic that it will apply to the proposed five storeyed building as it is yet to come up and therefore, revisitation of the same inter-alia vide a master plan to make it compliant qua EIA Notification, 2006 also is inevitable and imperative.

(f)The writ petitioner has made it clear that a reference to Master Plan is not a reference to 'Master plans' within the meaning of Section 17 of the Tamil Nadu Town and Country Planning Act, 1971 ['TCP Act' for the sake of brevity] and that it is a reference to a large scale



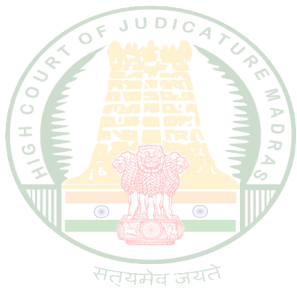
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comprehensive plan of action. Respondents in the writ petition (particularly MHC) have made it clear that there is no master plan. This Court is of the considered view that a master plan is imperative. One of the grounds of the writ petitioner is that the construction of five storeyed building on the Western side of MLC campus would be within 100 meters of said monument. It is made clear that this point has not been accepted as this Court has come to the conclusion that said monument is not a protected monument. For the sake of specificity, we clarify that the conclusion that the writ petition deserves to be allowed is de hors this point, i.e., on points other than this point;

(g)In this regard, we deem it appropriate to write that in the written submissions of MHC, it has been contended that as per section 17 of TCP Act, master plan needs to be prepared for local planning area declared under section 10 and local planning area does not encompass heritage structures such as MHC. It has also been averred that master plan plea is not supported by statutory frame



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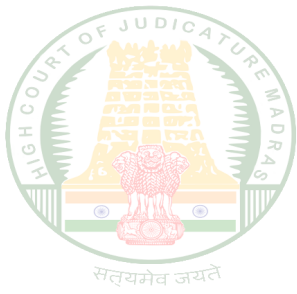
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work. In the considered view of this court, this argument pales into insignificance as writ petitioner in the master plan WP has made it clear in no uncertain terms that 'master plan' which is sought to be put in place is not 'master plan' within the meaning of Section 17 of TCP Act;

(h)The argument of writ petitioner that MHC is neither State Government / Central Government nor local authority and that it is definitely not a department of State Government or Central Government is a very sound argument and therefore, this Court has no hesitation in accepting the submission of writ petitioner that Section 58 of TCP Act does not apply to MHC. If Section 58 of TCP Act does not apply, necessary approvals under TCP Act and other applicable laws have to necessarily be obtained;

(i)To be noted, the argument of writ petitioner that PWD is only a implementing agency and that development is being made by MHC is not disputed;

(j)The writ petitioner very fairly submitted that brick and mortar superstructure put up thus far in MHC or in



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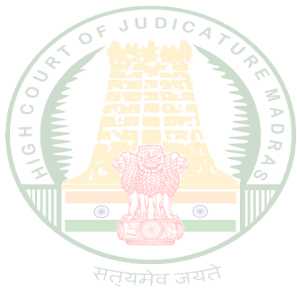


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other words, buildings put up thus far in MHC shall remain untouched and that only future developments from hereon and henceforth should be on the basis of the master plan. We make it clear that it is not a case of putting the clock back and it is only a case of averting further sporadic haphazard construction/s and ensure that constructions henceforth are in tune with the master plan. After all, master plan WP is not adversarial litigation;

(k)The master plan plea is clearly acceptable as the counter affidavit of the respondent makes it clear that further constructions in other lands closer to the present construction are in the anvil and therefore, a holistic development is imperative. In this regard, it is to be noted that erosion of green cover or absence of any holistic plan for development including connecting present building with other buildings that is to come up in the vicinity is not disputed;

(l)Writ petitioner who is a Senior Advocate (designated Senior Advocate and a senior member of the



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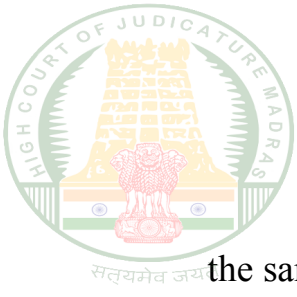


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Bar) who is also a alumni of MLC and similarly placed persons are clearly stakeholders and this buttresses sustaining strong submissions of writ petitioner;

(m)This order shall not be construed as any commentary or view on the work done by successive Hon'ble Building Committees of MHC over a period of time. The need for building, infrastructure and the brick and mortar structure have been addressed as and when the need/s popped up. Likewise, Hon'ble Heritage Committee has also done very good work in conservation but for which the heritage building may really not be what it is today. However, this order only means that henceforth and hereon the need and necessity for a master plan for entire MHC including Heritage building and organized development (including five storeyed building) as well as conservation as projected by the writ petitioner is accepted.

9.As already alluded to supra, both Writ Appeals are dismissed. Connected Civil Miscellaneous Petitions thereat perish with



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the same and Civil Miscellaneous Petitions are also dismissed. No costs.

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10.Writ Petition is allowed with the aforementioned observations and Writ Miscellaneous Petition thereat is closed. There shall be no order as to costs.

(M.S., J.,) (N.S.K., J.)
30.04.2025

Speaking order: Yes
Index: Yes
Neutral Citation : Yes
vvk

To

- 1.The Secretary,
The Ministry of Culture,
Government of India,
New Delhi.
- 2.The Director General of Archaeology,
Archaeological Survey of India,
Dharohar Bhavan, 24, Tilak Marg,
New Delhi – 110 001.
- 3.The Superintending Archaeologist,
Archaeological Survey of India,
Secretariat, Fort St. George,
Chennai-600 009.
- 4.National Monument Authority,
Ministry of Culture,
No.24, Tilak Marg, Bhagwan Das Lane,



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W.P.No.13881 of 2024

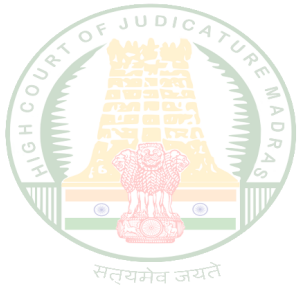
Mandi House, New Delhi-110 001.

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5.Regional Director (South) ASI &
Competent Authority,
National Monument Authority,
Fort St. George, Chennai-600 009.

6.The Registrar General,
Madras High Court,
Chennai-104.

7.The Registrar (Administration),
Madras High Court,
Chennai-104.



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W.A.Nos.2401 of 2023 and 2570 of 2024,
W.P.No.13881 of 2024

M.SUNDAR.J.
and
N.SATHISH KUMAR, J.

vvk

common judgment in
W.A.Nos.2401 of 2023 and 2570 of 2024
and
C.M.P.No.20153 of 2023 in W.A.No.2401 of 2023
C.M.P.No.18463 of 2024 in W.A.No.2570 of 2024
and
W.P.No.13881 of 2024
and W.M.P.No.15054 of 2024 in
W.P.No.13881 of 2024.

30.04.2025