IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2025

CORAM:

THE HONOURABLE MR. JUSTICE M. SUNDAR

AND

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P. No.34052 of 2025 and W.M.P. Nos.38215 and 38218 of 2025

P. Subramani ... Petitioner

vs.

1. The District Collector
   Collectorate
   Villupuram

2. The District Revenue Officer
   Villupuram

3. The Deputy Superintendent of Police
   Kottakkuppam
   Villupuram

4. The Commissioner
   Kottakuppam Municipalituy

5. The Tahsildar
   Tahsildar Office
   Vaanur
   Villupuram

6. The Assistant Director
   Fisheries Department
   TAHDCO Building
   Villupuram

7. The Revenue Inspector
Fisheries Department
Vaanur
Villupuram

8. The Inspector of Police
Kottakkuppam Police Station
Kottakkkuppam

9. The Village Administrative Officer
Kottakuppam

10. Shree Meykaanthamman Koil
Members of Nadukkuppam Village Panchayat
Nadukkukppam
Kottakkuppam

11. The Assistant Commissioner
Hindu Religious and Charitable Endowments Department
Near Regional Transport Office
Collectorate
Master Plan Complex
Villupuram

(R11 impleaded *suo motu vide* instant order) Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records in Notice Na.Ka.No.1702/2024/F1 dated 21.08.2025 on the file of the fourth respondent with regard to the alleged encroachment to an extent of 206.25 sq. meters in Survey No.369/2B, Nadukkuppam Village, Kottakkuppam and to quash the same as *ultra vires*.

For petitioner	Mr. M. Velmurugan
For RR 1,2,5,6,7 & 9	Mr.M.S. Arasakumar Govt. Advocate
For R4	Mr. T.K. Saravanan Additional Government Pleader
For R10	Mr. A. Anandharaj
For R11	Mr. N.R.R. Arun Natarajan Spl. Govt. Pleader – HR & CE

ORDER

(made by M. SUNDAR, J.)

Captioned main 'writ petition' [hereinafter 'WP' for the sake of brevity] has been filed with a prayer seeking issue of a writ of certiorari assailing an order dated 21.08.2025 bearing reference Na.Ka.No.1702/2024/F1 made by fourth respondent (Commissioner, Kottakuppam Municipality). This '21.08.2025 order made by fourth respondent' shall hereon and henceforth be referred to as 'impugned order' for the sake of brevity, convenience and clarity.

2. Mr. M. Velmurugan, learned counsel on record for writ petitioner, submits that the caption of the impugned order says that it has been issued under Section 128(1),(6)2 of 'the Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)' [hereinafter 'the TNULB Act' for the sake of

brevity, convenience and clarity] but the writ petitioner was not given an opportunity before making of the impugned order. In other words, show cause notice (SCN) was not issued prior to the making of the impugned order, is learned counsel's say.

3. Issue notice to official respondents (respondents 1 to 9).

4. Mr. M.S. Arasakumar, learned Government Advocate, accepts notice for respondents 1,2,5,6,7 and 9, Mr. T.K. Saravanan, learned Additional Government Pleader, accepts notice for fourth respondent and Mr.A. Anandharaj, learned counsel, accepts notice for tenth respondent (private respondent).

5. Mr. T.K. Saravanan, learned State counsel submits that writ petitioner was put on notice or in other words, SCN was issued to the writ petitioner prior to the impugned order and that the 'SCN is dated 14.05.2025 bearing reference Na.Ka.No.1702/2024/F1 issued by fourth respondent' [hereinafter 'said SCN' for the sake of convenience and clarity]. It was also pointed out by Mr. T.K. Saravanan, learned State counsel, that earlier, one A. Rajendiran came to this Court with a mandamus prayer *qua* a representation dated 07.04.2025, which, in effect, was a Removal of

Encroachment (RoE) prayer and this writ petition being W.P. No.28905 of 2025 was disposed of by an Hon'ble Single Bench of this Court *vide* order dated 12.08.2025 making a simple direction to fourth respondent to consider the representation on its own merits and in accordance with law within a time frame of eight weeks. It is submitted by learned State counsel that the impugned order is a product of this earlier judicial order.

6. Mr. A. Anandharaj, [Enrolment No.MS 333/2017 having office at No.474, New Additional Law Chambers, Chennai 600 104 (Mobile No.97878 98822], who has accepted notice for tenth respondent (private respondent), submits that Sri Meykaanthamman Koil [hereinafter 'said temple' for the sake of convenience and clarity] does have a hundial but its administration is with the local people, including aforereferred A. Rajendiran.

7. In the light of the submissions thus far, we deem it appropriate to *suo motu* implead 'The Assistant Commissioner, Hindu Religious and Charitable Endowments Department, Near Regional Transport Office, Collectorate, Master Plan Complex, Villupuram' as eleventh respondent and Mr. N.R.R. Arun Natarajan, learned Special Government Pleader (HR & CE), accepts notice for the newly impleaded eleventh respondent.

8. From a careful consideration of the submissions captured and set out *supra*, it comes to light that the legal perimeter within which the captioned main WP should perambulate is very limited and owing to the limited legal landscape, with the consent of learned counsel for writ petitioner, three learned State counsel and learned counsel for tenth respondent (private respondent), captioned main WP is taken up for final disposal in the Admission Board *i.e.,* Motion List, itself.

9. Mr. M. Velmurugan, adverting to records of the Village Administrative Officer, submits that Survey No.369/2A belongs to said temple and Survey No.369/2B is a way to burial ground. To be noted, these are survey numbers in No.80, Kottakkuppam Village, Vanur Taluk, Villupuram District. It is also submitted by learned counsel for writ petitioner that the writ petitioner is in S.No.369/2A which is said temple land and he is not concerned with S.No.369/2B. This, again, is the very reason for us to have impleaded eleventh respondent.

10. As regards said temple, applying **M.K. Gandhi** case principle *vide* order dated 25.06.2025 in W.P.No.13831 of 2022 (M.K.Gandhi Vs. The District Collector, Salem and others) reported in Neutral Citation **2025:MHC:1668**, it is clear that said temple is a public temple. Relevant

paragraphs of **M.K. Gandhi** case are paragraphs 13 to 21 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.'

11. We direct eleventh respondent to appoint a Fit Person to said temple within a fortnight from the date this order is uploaded on the official website of this Court, in exercise of powers under Section 49 of 'the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' [hereinafter 'TNHR & CE Act' for the sake of brevity]. We do so by taking judicial notice of the obtaining factual position and exercising our inherent powers under Article 226 of Constitution of India *i.e.,* our powers under writ jurisdiction.

12. Reverting to the impugned order of fourth respondent, learned counsel for writ petitioner submits that the writ petitioner gained knowledge about said SCN only after receipt of impugned order and therefore, immediately after impugned order, writ petitioner has sent a detailed representation dated 26.08.2025, scanned reproduction of which, as placed before us, is as follows:

(By R.P.A.D./ Speed Post)

26.08.2025

From

P. Subramani
S/o. Periyamadurai
23E, Meghaanthamman Koil Street,
Nadukkuppam, Kottakkuppam,
Villupuram, Tamilnadu – 605 104.

To,

The Commissioner,
Kottakuppam Municipality,
Villupuram District, Tamilnadu.

Sub.: Request to reconsider/ withdraw your Notice in Na.Ka. No.1702/2024/April1, dt. 21.08.2025 issued under Sec.128(1) of the Tamilnadu Urban Local Bodies Act, 1998 (as amended by Act of 2023) – reg.

Ref.: Your Notice Na.Ka. No.1702/2024/April1, dt. 21.08.2025.

Sir,

I am in receipt of your above-referred notice and hereby submit this representation for your kind consideration before initiating any adverse action affecting my legal rights and interests in my property.

Your aforesaid notice has called upon me to voluntarily demolish or remove the newly constructed building structure in my land admeasuring about 2000 sq.ft. and located in Survey No.369/2B, Kottakuppam Municipality, Nadukuppam Village, Vanoor Circle, Villupuram District.

Further, your notice has alleged that my land is situated in Survey No.369/2B and the same is encroaching by about 206 sq. meters (2220 sq. ft. approx..) of land meant for public purpose and being demarcated for use as approach road by Adi Dravidar community people to access their cemetery land in Survey No.369/2B.

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Our first objection is that our land admeasuring about 2000 sq.ft.(approx..) is situated in Survey No.369/2A and part of the temple land (Mariyamman Koil) and not Survey No.369/2B. I had recently reconstructed in my property after demolishing the old building concrete structure, which I own, possess and in peaceful enjoyment for almost 30-35 years now. Hence, without proper enquiry this notice has been issued without proper application of mind and needs to be withdrawn forthwith.

Secondly, the stated cemetery land for the Adi Dravidar community people is situated completely away and in a different direction altogether, from my property. To allege that my property, which has been under my ownership, possession, and peaceful enjoyment for the last 30-35 years, as encroaching the access road to cemetery land for Adi Dravidar community people, is false, wrong, misleading, and made with an ulterior motive. It is pertinent to mention that the land is situated many meters away from the property and the access road to the same for the residents of Ward 10 and 11, is in a completely opposite and different direction, from my property.

Thirdly, when the notice is alleged to be issued under Sec.128(1) of the Tamilnadu Urban Local Bodies Act, 1998 (as amended by Act of 2023), the same is subject to a statutory requirement to issue a show cause notice and provide an opportunity of hearing. However, your office has directly proceeded to issue a demolition notice, completely ignoring the statutory requirement and hence the same stand void and invalid in law. Further, it is not clear as to under which Act the provision of law in Sec.(6) 2 is being referred to.

In the light of the aforesaid, I request you to kindly consider this representation and withdraw the Notice Na.Ka. No.1702/2024/April1, dt. 21.08.2025, issued by you. I further request that no coercive action be taken without considering this representation and granting me an opportunity of personal hearing.

Yours Truly,

P.சுப்ரமணி

(P.Subramani)

13. There is considerable disputation about whether said SCN and another earlier notice referred to thereat being notice dated 25.02.2025, were actually served on the writ petitioner or not. While learned State counsel asserts that service was effected, learned counsel for writ petitioner contends to the contrary and submits that while said SCN was not served on the writ petitioner, the 25.02.2025 notice was received by a construction worker at the site and without knowing the consequences, he had brought it to the notice of the writ petitioner very late.

14. Without embarking upon the legal drill of adjudication upon this disputation which heavily turns on facts, as even according to Section 128 of the TNULB Act, noticee/writ petitioner should be afforded an opportunity *i.e.,* writ petitioner should be show caused, we deem it appropriate to set aside the impugned order without expression of any view or opinion on the merits of the matter and directing fourth respondent to consider writ petitioner's representation dated 26.08.2025 (scanned and reproduced *supra*) and pass 'final orders' within the meaning of Section 128(1)(b) of the TNULB Act. We do so. Such 'final orders' should be served on the writ petitioner under due ackowledgement within seven working days. This gives a quietus to the certiorari limb of the prayer.

15. Be that as it may, as we have taken judicial notice of the obtaining factual position (as stated in paragraph 11, *supra)* and as we have given direction to eleventh respondent, we make it clear that it is open to, nay, bounden and statutory duty of Fit Person and other officials of HR & CE Department to initiate action under Section 78 of TNHR & CE Act if there is encroachment of said temple land. To be noted, as already alluded to *supra*, writ petitioner submits that he is in said temple land, *viz*., S.No.369/2A and interestingly/intriguingly, there are two noticees in the impugned order and while first noticee is the writ petitioner, second noticee is said temple.

16. Though obvious, we make it clear that coercive action, if any and if that be so, shall be subject to and depending upon orders to be made by fourth respondent under proviso to Section 128(1)(b) of the TNULB Act in the aforesaid manner.

17. *Ergo*, the sequitur is, captioned main WP stands disposed of in the aforesaid manner. In the light of what this Court has written regarding coercive action, captioned writ miscellaneous petitions thereat have become otiose and the same are disposed of as closed, having become otiose. There shall be no order as to costs.

(M.S., J.) (M.S.K., J.)
11.09.2025

cad
Index : Yes/No
NC : Yes/No

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